

THE GOVERNMENTS OF MODERN EUROPE

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THE GOVERNMENT OF SWITZERLAND

BY WILLIAM E. RAPPARD

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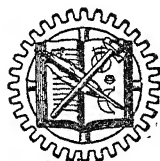
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GOVERNMENT OF  
SWITZERLAND



WILLIAM E. RAPPARD



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## INTRODUCTION.

### WHY THE GOVERNMENT OF SWITZERLAND IS OF PARTICULAR INTEREST TO AMERICAN STUDENTS

There are obviously a great many reasons why the government of Switzerland should be of no particular interest to American students. The United States is a world unto itself, teeming with solved and unsolved political problems. If, for reasons of general culture or on account of their repercussions on American foreign relations, the scheme of government of other countries should attract attention in America, it is very natural that such attention be directed in the first place either to the Western hemisphere, or westward to Japan, or eastward to the great powers of Europe.

Strange as it may seem, there are however a variety of circumstances which have, for generations, led English-speaking and especially American authors to devote particular consideration to the political institutions of Switzerland. What are these circumstances?

In the first place Switzerland was, throughout the ages, a republic. When the United States was born as an independent nation, Switzerland had behind it a republican tradition of half a millenary. Throughout the nineteenth century, with very few exceptions, Switzerland enjoyed the monopoly of being a republic. That monopoly was de-

stroyed first by France in 1871, then by Portugal in 1910 and, since the war, by most of the defeated states and by all the new states created by the peace treaties. There is no doubt, however, that, especially during the century following the establishment of the United States, which might in Europe be called the heroic period of the republican tradition, Switzerland and Swiss institutions were studied by Americans mainly on account of the political relationship established by this community of government.

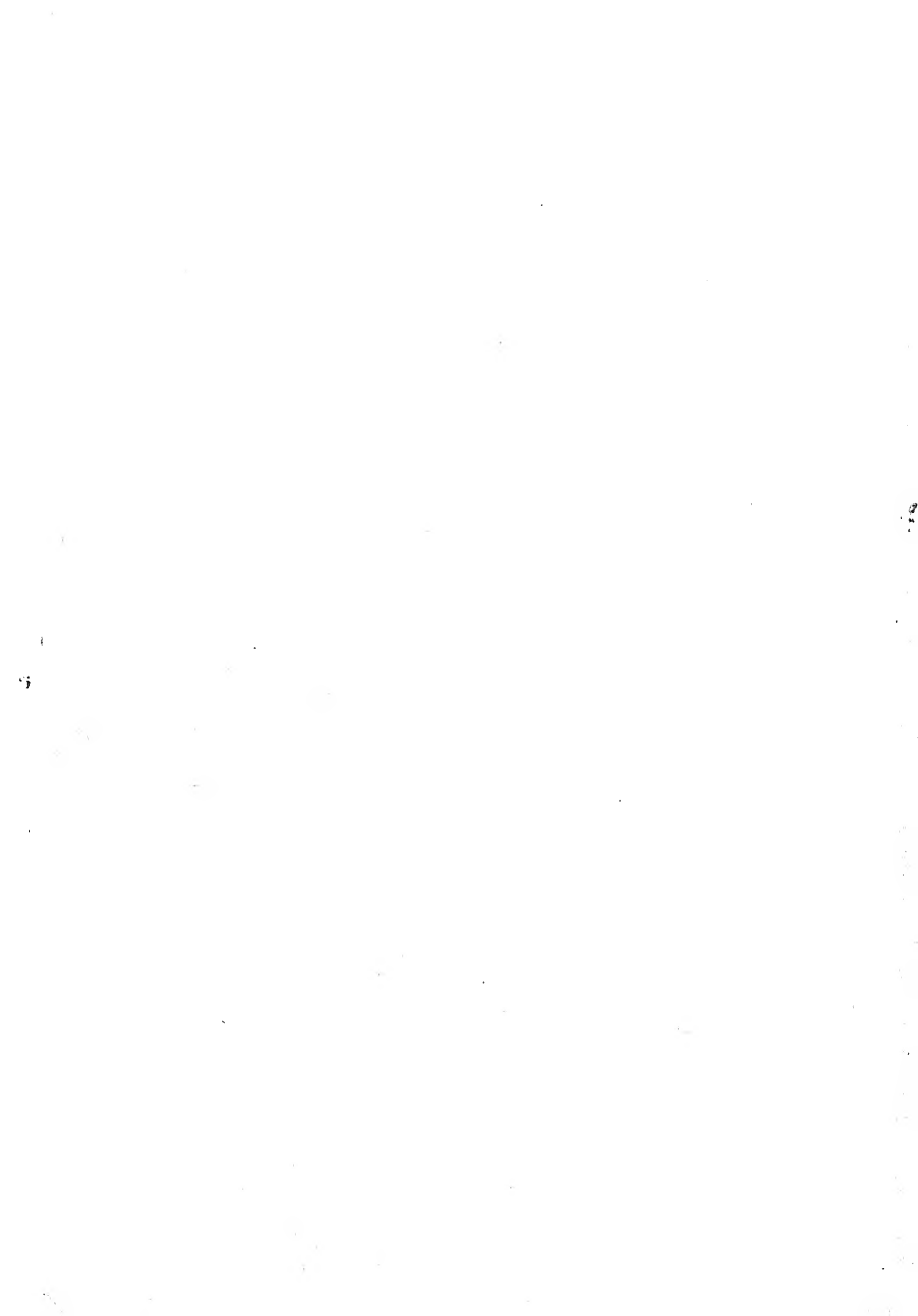
This relationship is, furthermore, not one of external appearances alone. As did the United States, Switzerland grew from a loose confederacy of practically sovereign states into a federal union. This evolution, which was formally accomplished in little more than five years in America, took somewhat more than five centuries in Switzerland. However, as we shall see, the adoption by Switzerland in 1848 of the bicameral form of government was not only a conscious and deliberate imitation of the American model, but also the effective solution of precisely the same political problem as that which had been solved in 1789 at Philadelphia. It is natural that the dualism thus created of state or cantonal government, on the one hand, and federal government on the other, should have led the American and the Swiss nations constantly to compare notes on their respective experiences.

The political loan Switzerland raised in the United States when it borrowed the bicameral system in 1848 has been partly repaid in kind since. The initiative, referendum and recall which have been adopted by so many American states in the course of the last generation, are democratic institutions of Swiss origin. They also account in part for the interest taken in Swiss political affairs by American observers.

A less noted but none the less noteworthy analogy between the United States and Switzerland is presented by their demographic characteristics. The United States, although preëminently an English-speaking Anglo-Saxon commonwealth, has, in the course of the last century and a half, welcomed to its shores millions of non-English-speaking immigrants. The composite nature of its population which has resulted from this historical process has given rise, notably in the field of foreign relations, to problems and traditions which find their approximate counterpart in Switzerland.

In so far as the policies of neutrality and isolation from foreign entanglements are due to demographic reasons, this analogy between the United States and Switzerland deserves to be studied with care. In Berne as in Washington, statesmen have always been very loath to take sides in conflicts between foreign nations, not only for the perfectly natural and legitimate desire to mind their own business and thereby to preserve their respective countries from avoidable complications. They have done so also on account of the divergent national sympathies springing from the composite character of the American and the Swiss people.

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## CHAPTER I

### THE OBJECTS OF GOVERNMENT: THE COUNTRY AND ITS INHABITANTS

The function of government is twofold: first, to regulate the inter-individual relations, that is the social life of a national community, and secondly to contribute to the regulation of the international relations of that community as a member of the society of nations. In order to understand any given scheme of government, it is necessary therefore to be acquainted with the main objects of its activities: the land and the people under its control.

#### 1. *Geography.*

Switzerland is a landlocked country situated in the heart of Western Europe. For about 40 per cent of the length of its frontiers it is contiguous to Italy, for about 30 per cent to France, for about 20 per cent to Germany and for about 10 per cent to Austria. Its central Alpine position has made of it the source of several important international rivers. The Rhine, flowing northward into the North Sea, the Danube and the Po flowing south-eastward into the Black Sea and into the Adriatic, and the Rhone flowing southwestward into the Mediterranean, all spring or receive affluents springing from the Swiss Alps. Together these rivers pass through or touch upon the territory of ten foreign countries between their sources in Switzerland and the sea.

This circumstance alone would suffice to account for the international character of Swiss political life. But there are several others. The second geographical fact or group of facts which also tend closely to integrate Switzerland into the world community is its small size in connection with the nature of its soil and subsoil, on the one hand, and with the relative importance and wealth of its population, on the other.

In point of area, Switzerland (41,000 sq. km.), about half the size of Maine, is the fourth smallest state of Europe, if we leave out of account such pygmy countries as Andorra, San Marino, Liechtenstein and Monaco. It is larger only than Luxemburg (12.6), Albania (28), Belgium (30) and the Netherlands (34). In point of population, however (4.1 millions), it precedes Luxemburg (0.3), Albania (1.0), Estonia (1.1), Latvia (1.9), Lithuania (2.5), Norway (2.9), the Irish Free State (3.0) and Denmark (3.6).

## *2. Population.*

In point of density of population, on the other hand, it is very near the top of the list of European countries (100 inhabitants per sq. km.), and this in spite of the fact that, on account of its mountains and lakes, nearly one quarter of its territory is unfit for cultivation and habitation. It is the most thickly inhabited country of Europe after Belgium (273), the United Kingdom (244), the Netherlands (215), Germany (141), Italy (137), Luxemburg (115) and Czechoslovakia (107).

Furthermore, whereas all the above more densely populated countries either enjoy a wealth of mineral resources or possess large commercial cities bordering on the sea, Switzerland has neither. Now a large and prosperous pop-

ulation inhabiting a small and poor country must depend on the outside world both for its supplies and consequently also for its markets. It is therefore not surprising to find Switzerland among the nations of the world whose foreign trade per head of the population is the greatest. Before the recent abnormal shrinkage of foreign trade, Switzerland occupied the third position in Europe in this respect and since it has risen to the first as the following table shows, to which we have added, for purposes of comparison, the United Kingdom and the United States:

	1929			1934		
	<i>Population</i>	<i>Foreign trade, 000,000 gold \$</i>	<i>Foreign trade per capita</i>	<i>Population</i>	<i>Foreign trade, 000,000 gold \$</i>	<i>Foreign trade per capita</i>
Holland.....	8.4	1906	229	8.3	793	85
Belgium.....	8.2	1871	228	8.2	755	92
Switzerland.....	4.1	917	224	4.1	432	105
United Kingdom..	47.0	8956	191	47.0	3238	69
United States.....	126.0	9496	75	126.0	2228	18

The ratio between the population of the country and the annual value of its foreign trade is perhaps the best single measure of its economic dependence on the world at large. Of other possible measures, such as capital investments abroad, or foreign investments in the domestic market, international insurance, international carrying trade and international migrations, we will consider but the last mentioned, although all would tend to illustrate our point.

International migrations in their various forms have always played a great part in the national life of Switzer-



land. Until the middle of the nineteenth century, when it came to be prohibited by the Constitution, the recruiting of Swiss troops for military service abroad was the most outstanding method of Swiss emigration. It was supplemented until then and has been replaced since then by a relatively very important commercial, industrial and agricultural exodus, mainly to the United States. American statistics show that, from 1830 to 1920, over a quarter of a million Swiss entered the United States as immigrants. This, for an average Swiss population throughout that period of less than three millions, is doubtless the highest per capita ratio of any continental European country and the highest of all after Ireland.

While the Swiss were thus very freely emigrating, there was a continuous influx of foreigners, mainly Germans, Italians and French into Switzerland. Thus in 1910, 14.7 per cent of the population of Switzerland were of foreign citizenship. Although, as a result of the World War, that proportion has fallen to 8.7 per cent in 1930, it is still one of the highest in the world, being almost twice that of the United States.

Finally international migrations in the form of foreign tourist traffic are an important factor in the social and economic life of the country that has won the rather dubious honor of being called the playground of the world. It would be a grave error, however, to attribute, as casual travelers are apt to do, the undeniable and somewhat mysterious past prosperity of Switzerland primarily to the hotel business. Doubtless it does contribute appreciably to compensate for the normally heavy excess of imports over exports which has always characterized Switzerland's balance of trade. But even if the net balance of the tourist traffic, that is the excess of foreign tourists' expenditure in

Switzerland over Swiss tourists' expenditure abroad be put as high as 40 per cent of the excess imports, that traffic is neither the main source of the national revenue nor the principal industry of the country.

### 3. *Professional, linguistic, and religious composition.*

The distribution of the population according to the gainful occupations from which it draws its income is well shown in the following table. The percentages are based on the decennial censuses since 1888, when they began to produce tolerably comparable results:

Year	Produc- tion of the soil	Indus- trial employ- ment	Bank- ing, trade, insur- ance	Hotel indus- try	Comm- nications and trans- port	Civil service and liberal profes- sions	Ser- vants and day labor- ers	Hospi- tals, board- ing schools, etc.*	Total
1888†	37.7	41.4	4.6	2.5	2.7	3.9	7.2	.....	100
1900	31.3	44.7	5.4	3.7	3.9	4.1	6.4	0.5	100
1910	27.1	45.5	6.5	4.4	4.8	4.6	6.4	0.7	100
1920	26.1	43.9	7.8	4.0	4.9	5.1	6.3	1.9	100
1930	21.7	44.6	9.8	4.8	4.4	5.3	7.2	2.2	100

There are perhaps no available figures which give so clear an insight into the economic and social structure of the Swiss people as these. Comparing them with similar statistics drawn from the United States census of 1930, we note that the industrial population is relatively larger in

\* This category was not set up in the census forms until 1900.

† Censuses have been taken regularly every ten years since 1850. In 1888 the date of the census was exceptionally advanced by two years as immediate population returns were required for the application of two legislative measures concerning electoral constituencies and social insurance.

Switzerland but that all other branches of economic activity are more heavily represented in America. The same observation can be made with respect to most other European countries. Only Belgium and the United Kingdom possess a relatively stronger industrial population and only these two countries and Holland possess a relatively weaker agricultural population than Switzerland.

Our figures are interesting also in that they show the changes which have taken place in the course of the last generation. In spite of all the protective measures, tariffs, subsidies, etc., which have been taken in Switzerland to encourage agriculture and correspondingly to discourage the movement towards the towns, the natural trend has not been appreciably checked.

Compared with themselves in the past as well as with other nations in the present, the Swiss are today an essentially urban and non-agricultural people. The fact is all the more striking as they still retain many social characteristics of democratic simplicity which one usually associates with country more than with town life. This is due both to tradition and to the circumstance that, although more than 30 per cent of the population live in municipalities of over ten thousand inhabitants, there are really no large cities in Switzerland. Only four, Zurich, Basle, Geneva and Berne have over one hundred thousand inhabitants each and Zurich, which is nearly twice as large as Basle and more than twice as large as Geneva, has barely over three hundred thousand inhabitants.

Until the end of the eighteenth century, Switzerland was a purely Germanic country, ruling over and allied with some French and Italian-speaking neighbors. The written language in which all official documents were drafted was literary German. The spoken tongue was a

Germanic dialect or rather, as every canton and even every region had its own, a variety of German dialects. These *patois* were sufficiently alike to be universally understood in all cantons, but sufficiently different from the more literary forms of German spoken beyond the Rhine to be a real obstacle in familiar intercourse and thereby an effective protection against foreign influence. In fact this Germanic pre-revolutionary Switzerland had more to fear from French than from German foreign influence. The kings of France had always claimed and enjoyed a privileged position amidst their Swiss neighbors with whom they had many ties, both military and commercial. A symptom of this former French preponderance has survived until this day, in that France, alone, is represented at Berne by an ambassador, whereas all other states are content to maintain there a minister plenipotentiary of secondary rank.

A nation in which German was the only official language, in which Germanic dialects were the only common tongue of the plain people, in which French was known and used only in the more cultured society in some of the cantonal capitals, but in which the political and economic influence of France was much greater than that of the German states, such had Switzerland been for centuries until the upheaval caused by the French Revolution. As we shall see in the next chapter, this upheaval, although only temporary in several of its immediate consequences, had many lasting effects on the political destinies of Switzerland. Among these none was more important than the changes it wrought in the linguistic field. Since 1798, Switzerland has become a bi- and even a tri-lingual country.

Of the former subject provinces freed by French revo-

lutionary influences, one has become the French-speaking canton of Vaud and another the Italian-speaking canton of Tessin. Furthermore, pluri-lingual Grisons and French-speaking Valais, Neuchâtel and Geneva, formerly more or less independent allies of the Swiss, were admitted as full cantons into the Confederation. Moreover, the French-speaking inhabitants of Fribourg were given the same status as their German-speaking fellow-citizens to whom they had previously been subjected. Finally, a part of the French-speaking Jura was, after the Napoleonic wars, annexed to the German-speaking canton of Berne as compensation for the territories of Vaud and of Argovie which had become separate cantons. In 1798 and again in 1803 Switzerland had, under French influences, received her first written Constitutions, both of which were in French. At the Congress of Vienna, in 1815, the reaction against everything Napoleonic brought with it the return to German as the only official language in Switzerland. In 1848, finally, an article was adopted in the new federal Constitution which expressly states that "the three main languages of Switzerland, German, French and Italian, are the national languages of the Union."

Ever since its adoption, that fundamental principle has never been seriously questioned. As a legal consequence it has been recognized that, in all official relations with federal authorities, German, French and Italian-speaking Swiss have a right to use their own tongue. As a matter of practice, however, Italian, which as we shall see presently is the mother tongue of only 6 per cent of the inhabitants of Switzerland, has not claimed an absolute parity of position. Although all federal laws are published in the three languages, most of the other official documents appear only in German and in French. Even Italian-Swiss

representatives usually speak French in the Federal Parliament, as do Italian-Swiss lawyers appearing before the Federal Tribunal.

In the cantons, it is, of course, entirely different. In fourteen of these German, in three French and in one Italian is the only official language. In Berne, Fribourg and Valais, German and French are both official, although in Berne, German, and in Fribourg, French, enjoy the privilege of being the original language in which the Constitution and the laws are drafted and according to which they are, in case of doubt, to be construed. In the Grisons, German, Italian and Romanche—a peculiar tongue of Latin origin—are all three declared to be official languages, but German is given preference over the two others.

The relative importance of the languages spoken in Switzerland according to the census of 1930 is as follows: German 71.9 per cent, French 20.4 per cent, Italian 6 per cent, Romanche 1.1 per cent, other languages 0.6 per cent.

In fourteen of the twenty-two cantons, German, and in one, Italian is the mother tongue of over 90 per cent of the population. In three, French enjoys a similar position. Owing mainly to the influx of German-Swiss, however, French is in no canton the mother tongue of more than 83 per cent of the inhabitants. In the so-called mixed cantons, the respective proportions are as follows:

	<i>German</i>	<i>French</i>	<i>Italian</i>	<i>Romanche</i>	<i>Others</i>
Berne.....	83.5	15.4	0.8	0.1	0.2
Fribourg.....	32.1	66.7	0.8	....	0.4
Grisons.....	53.7	0.5	14.0	30.9	0.9
Valais.....	32.5	64.9	2.4	....	0.2

The political significance of the multi-lingual character of the Swiss people is obvious. Quite apart from the technical solution given to the technical problems arising there-

from, the Swiss experience is of profound interest for the student both of national government and of international affairs. As Woodrow Wilson wrote in a treatise on the State in 1896: "The cantons . . . having allied themselves . . . went on to show the world how Germans, Frenchmen, and Italians, if only they respect each other's liberties as they would have their own respected, may by mutual helpfulness and forbearance build up a union at once stable and free."<sup>1</sup>

Even if it should be deemed inaccurate, as it undoubtedly is, to refer to the German-, French- and Italian-speaking Swiss as to Germans, Frenchmen and Italians, Wilson's main idea is as true as it is striking. It is all the more true and striking when one realizes that Switzerland, surrounded by Germany, France and Italy, achieved its real national unity for the first time in its ancient history in the middle of the very century when community of language was hailed by most publicists as the only natural, legitimate and lasting basis of nationality and patriotism. During the World War, it at one time seemed as if the divergent sympathies of the Swiss people might belie their faith in their own supra-linguistic principle of national unity. Even in this most trying of international crises, the community of tradition proved stronger, however, than the centrifugal forces of divergent hopes and fears. From this crisis, the Swiss people emerged more united than ever in their desire to preserve their own national independence. It may be added that the present nationalistic, dictatorial, and totalitarian régimes in Germany and Italy, whose aspirations most violently offend against the Swiss ideals of coöperation, freedom, and democracy, have still further tended to fortify this desire.

<sup>1</sup> Rev. ed., New York, p. 301.

Whereas the linguistic pluralism is recent in Swiss history and has never given rise to violent division among the Swiss people, the lack of religious unity is much more ancient and has been the cause of repeated and prolonged internal strife. Ever since the 1st of January 1519, when Zwingli, the reformer of Zurich, proclaimed from the pulpit of his cathedral, that he would henceforth expound the Gospel as he found it in the original sources without being bound by instructions from Rome, Switzerland has been divided between foes and friends of the old faith. And ever since the first half of the sixteenth until the middle of the nineteenth century, this division has led to separate alliances, to civil wars and to foreign entanglements.

Fortunately for the national unity of the country, the frontiers separating the confessional and the linguistic groups do not run along the same lines, but cut across each other. Today 57.3 per cent of the population are Protestant and 41 per cent are Catholic. The Protestants outnumber the Catholics in twelve cantons, of which nine are German and three French-speaking. The Catholics, on the other hand, outnumber the Protestants in ten cantons, of which seven are German, two are French and one is Italian-speaking. Furthermore, in most of the Protestant cantons there are strong Catholic minorities, whereas in eight out of the ten Catholic cantons the Catholics represent over 80 per cent of the total population. This geographical and statistical distribution of the two rival faiths, even if it has not always prevented oppression, obviously makes for mutual toleration.

This mutual toleration is, however, of comparatively recent origin. For three centuries after the Reformation, the cantons being their own masters, the Protestant states tolerated only Protestants as citizens and the Catholic



states only Catholics. One of the main purposes of the federal Constitution set up in 1848 and amended in 1874 was to break down these barriers, to create a truly Swiss citizenship and to guarantee certain fundamental rights to all Swiss of all creeds throughout the whole country. The profound changes effected in 1848 were the constitutional reaction to modified economic and political conditions, that is to say, to a broadening both of the market and of the national consciousness. In its turn this change promoted and facilitated the democratic movements to which it owed its origin and led to a gradual shifting of individual loyalties from the canton to the federal state. The following table shows the extent to which internal migrations have taken place in the course of the last seventy-five years:

BIRTH-PLACE OF THE POPULATION WHEN COUNTED AT THE  
SUCCESSIVE CENSUSES

*For every 100 inhabitants of Switzerland, were born*

	<i>In the commune of residence</i>	<i>In other communes of the same canton</i>	<i>In other cantons</i>	<i>In foreign countries</i>
1860.....	63.8	24.6	7.3	4.3
1888.....	56.4	25.7	11.5	6.4
1900.....	52.0	24.8	13.9	9.3
1910.....	48.4	24.4	15.4	11.8
1920.....	47.2	25.1	18.5	9.2
1930.....	45.2	25.0	21.0	8.8

It is apparent from these figures that the Swiss people are feeling more and more at home in all parts of their own country. Whereas in 1860 less than 10 per cent of the population had migrated to cantons other than those of their birth, this proportion had increased threefold by 1930. The steadiness of this increase from decade to decade shows that under the new constitutional conditions

a people formerly made up of the citizens of twenty-two allied cantons is more and more growing into one nation.

Even today, however, the cantons continue to have a far greater hold on their sons than do the American states. The average Swiss is still apt to declare that he feels himself a Bernese, a Baslese or a Genevese first and only secondly a Swiss, whereas one would hardly expect a corresponding statement from an American, even were he a Bostonian.

## CHAPTER II

### THE CONSTITUTIONAL EVOLUTION OF SWITZERLAND

#### 1. *Historical origins.*

Switzerland is usually said to have been born in 1291. It was in the beginning of August of that year that the free men of the Alpine valleys of Uri, Schwyz and Unterwalden, bordering on the Lake of Lucerne, concluded their first historically recorded treaty. They bound themselves pacifically to settle all internal disputes by arbitration, and mutually to defend each other against all external aggression.

From then on for five centuries the constitutional history of Switzerland is the history of frequently renewed and constantly enlarged covenants. At the time of the French Revolution, these covenants bound together thirteen sovereign states or cantons.

Six,—Uri, Schwyz, Unterwalden, Zoug, Glaris and Appenzell,—were democratically governed Alpine communities, whose sovereignty was vested in and exercised by *Landsgemeinden*, annual meetings of all male citizens.

Four cantons,—Lucerne, Berne, Fribourg and Soleure,—were urban aristocracies in which a relatively small number of families ruled over their towns and the adjacent countryside. The hereditary principle, which limited the number of these privileged families, was tempered by elections among their male representatives. Although every

son of these families could expect, in the course of his life, to sit in the Great Council of State and to hold some lucrative political office, his merits alone, as estimated by his peers, could secure for him a seat in the Small or Inner Council, which in fact exercised the supreme authority.

Similar to these four aristocracies were the three oligarchies of Zurich, Basle and Schaffhouse. Their general political structure was much the same, but their temper was somewhat less haughty and exclusive. In the oligarchies the privileged families, to which new recruits were more freely admitted, as a rule engaged in trading and manufacturing pursuits, whereas these were frowned upon by their aristocratic neighbors. Furthermore the general body of ordinary citizens enjoyed a larger measure of political, although rather a smaller measure of economic, liberty.

All three types of cantons, not excluding the democracies, ruled as sovereign masters over subject territories. Moreover there were a considerable number of treaties of alliance binding one or several of the cantons to various communities situated on the outskirts of the then Switzerland. Thus the city and the bishopric of St. Gall, the Grey Leagues, which were later to become the Grisons, the ecclesiastical principality of Basle, most of which was later merged into the canton of Berne, the principality of Neuchâtel, whose nominal head was a Hohenzollern, the community of the Valais and the free republic of Geneva, all in some way or other belonged to the Swiss society of nations. They were, however, not subject peoples, nor did they belong to the inner circle of Swiss cantons. As allies, they occupied a position which might in some respect be described as intermediary.

Until 1798 the thirteen cantons formed a sort of minia-

ture league of nations. Their individual rights were so preponderant and their federal organization so loose that historians have generally been led to declare that there was no such thing as a Swiss state. There was no form of representative government, nor anything resembling a federal civil service, nor a federal army, nor a federal budget, nor a national citizenship. Each canton was its own master, not only as concerned its internal structure, but even in such foreign affairs as commercial policy. The national interests were discussed in a periodically meeting Diet, in which each cantonal government enjoyed separate and equal representation. As most decisions involving any matter of principle could validly bind only those cantons who had agreed to it, the Diet was as unwieldy and as impotent as the present Assembly of the League of Nations. Here as there the general recognition of the rule of unanimity paralyzed action and led to countless adjournments.

As the cantons resembled each other only in language, but neither in political institutions nor in religious faith, their national unity was often conspicuous by its absence. Not only was Switzerland unable to defend the common interest of all its members by pursuing a straightforward and energetic foreign policy, but it was even, on various momentous occasions, incapable of maintaining peace among its members. When one considers the history of these five hundred years of internal strife and of external intriguing, one cannot but be surprised at the survival of the Swiss nation as such.

The forces which made for the maintenance of national unity were pressure from without and the cohesive vitality of certain traditions. The memories of battles waged in common and a like spirit of independence which revolted

at all foreign oppression proved stronger than the disruptive influences of opposing religious faiths and divergent political ideals.

The circumstances which allowed the Swiss cantons to gain and to maintain their common freedom were, however, always precarious. The inherent weakness of the federal bond became manifest when, in 1798, the territory was invaded by the armies of the French Revolution.

*2. From the Helvetic Republic of 1798 to the Confederation of 1848.*

In the Spring of 1798 Switzerland was forced to accept a revolutionary Constitution which had been drafted in Paris. This Constitution, the work of French lawyers in consultation with a small group of Swiss citizens who subordinated the independence of their country to its reformation in accordance with their political convictions, completely transformed the institutions outlined above.

In the place of a loose confederacy of very dissimilar communities, the new Constitution set up a "Helvetic Republic" which it declared to be "one and indivisible." Equality between the various parts of the country and between the various classes of the population was substituted for privilege and subordination. Some of the former allies and all the former subject provinces were incorporated into the former sovereign states or set up as new and equal cantons beside the old. A strong central Government of the French type and under the immediate influence of France was established and entrusted with the task of endowing the whole country with a uniform scheme of administration and with a uniform system of legislation.

This régime proved so repugnant to all Swiss traditions that, although supported by some of those to whom it had brought freedom from political and economic subjection, it could not survive the withdrawal of French military support.

On September 30, 1802, Bonaparte, as First Consul of the French Republic, put an end to the violent internal turmoil which the successive Governments of the Helvetic Republic had been unable to master. "I shall be your mediator and my mediation will be successful, as becomes the great peoples in whose name I speak," he declared in a proclamation addressed from his palace at St. Cloud to the eighteen cantons of the Helvetic Republic. Having summoned to Paris some sixty representatives of the various parts and parties of Switzerland, he set them the task of drafting a new Constitution under his general supervision and in conference with four French senators. This task, in the direction of which Bonaparte had shown an extraordinary insight into the exigencies and diversities of the Swiss nation, was completed in the space of three months.<sup>1</sup> On February 19, 1803, a delegation of ten Swiss notables were admitted into his presence and received from him the so-called "Act of Mediation."

This Act contains the nineteen cantonal and the federal Constitutions under which Switzerland lived, as happily as external circumstances permitted, from 1803 until the end of 1813. The document, drafted in strict conformity with the First Consul's personal views, was to a large extent, but with some vital changes, the codification of the laws and practices under which the country had prospered for centuries.

<sup>1</sup> See in the documentary annexes Bonaparte's statement on the essentials in Swiss government.

By reëstablishing the authority and the diversity of the local Governments, while doing away with the privileges of birth and place, it proved well suited to the needs of the Swiss nation. However, introduced by Bonaparte, it was bound to be repealed after the fall of Napoleon. On the morrow of the battle of Leipzig, in the Autumn of 1813, Switzerland, invaded by the armies of the Coalition, was expressly invited by the Austrian and Russian Cabinets to free itself from all the restraints placed upon it by its former mediator. After prolonged and laborious negotiations under the pressure of the Allied Powers, a new federal Constitution was drafted in the course of 1814 by the Diet in Zurich and formally endorsed, as the Pact of 1815, by the Congress of Vienna.

Enacted under the reactionary influences of the day, this Pact was another step backward. However, it did not entirely reëstablish the state of affairs prevailing prior to 1798. The privileges of birth were not fully recognized again and it was found impossible to reduce the subject provinces to their former status. As a consequence of the entrance of Valais, Neuchâtel and Geneva into the new Confederation as full members, Switzerland received the twenty-two cantons it has today.

From 1815 to 1830, Switzerland, as the rest of Europe, lived under the régime of the so-called Restoration. Economic reconstruction after the wars of the Empire went hand in hand with political reaction against the doctrines of the Revolution. While the ruling classes were not dissatisfied with their position of restored authority, the masses of the people became more and more restive. They had tasted of liberty and equality and saw no reason why these advantages should again be denied them.

When the liberal revolutions broke out in Paris and in



Brussels in the Summer of 1830, and when it became apparent that the Powers of the Holy Alliance, who had been looked upon as the guardians of the régime of the Restoration, were either unwilling or unable to defend it, the majority of the Swiss people also raised their voice in protest. In the course of a few months, in one canton after another, the people demanded and peacefully obtained the abdication of their Governments. All the former aristocracies and oligarchies were transformed into representative liberal democracies.

These new cantonal Governments were unanimously in favor of amending the Pact of 1815 in order to conform it to their newly realized ideals. It was not found possible, however, to meet their demands in a constitutional manner. The minority, composed of the Alpine democracies and of the equally Catholic cantons of Lucerne, Fribourg and Valais, remained after some hesitation faithful to the spirit of their former cantonal Constitutions. Opposed to all liberal reforms and claiming that the Pact of 1815, being in the nature of an international treaty between sovereign states, could not be legally amended except by the unanimous vote of all its signatories, they blocked all proposed revisions. They feared that, as a result of such revisions, their rights as sovereign states and as confessional minorities would suffer invasion.

What neither persuasion nor political pressure could accomplish was achieved by the sword. In 1847 a brief civil war broke out. The seven minority cantons which had set up a separate alliance called the *Sonderbund* were completely and rapidly routed on the battle field. Without their coöperation and consent the Diet drafted, and the people by a constitutional referendum adopted, the Constitution of 1848.

The authors of the Swiss Constitution of 1848 were faced with a problem very similar to that which, sixty years before, had been solved in the United States by the adoption of the Constitution of 1789.<sup>2</sup> Out of an all too loose confederacy of all too sovereign and very unequal political units was to be born a strong but liberal and well-balanced union. Whereas, however, the Anglo-American traditions had all been in favor of a double Chamber, the Swiss traditions were all opposed to it. From times immemorial, the cantons without any exception and the Confederation with the very damaging exception of the Helvetic Republic, had known only a single legislative body.

As was natural, the large cantons favored the constitution of such a legislature in which the Swiss people would be represented according to their numbers. Proposals to that effect, however, aroused the most resolute opposition of the smaller cantons. Their opposition was due to two considerations. First, a single popularly elected house of representatives was bound to bring about a measure of national centralization contrary to their love of local autonomy. This opposition, similar to that of the States' Rights Party in America, has always been that of the so-called federalists in Switzerland. It is curious to note in passing that the same word has been used to define exactly opposite tendencies in the two countries. Whereas, in the United States, the federalists were the partisans of a strong federal state, as opposed to a loose federation of states, in Switzerland the federalists are those who promote and emphasize the federal character of the Confederation, as opposed to its national or centralizing tendencies. The

<sup>2</sup> See in the documentary annexes the extracts from the report of the committee which drafted the project of the federal Constitution of 1848.

second reason why the Swiss federalists, who have always been the spokesmen of the linguistic and confessional minorities, were hostile to a single house of popular representatives was because in such a body they were bound to be outnumbered. They therefore favored the maintenance of the Diet, in which each canton would continue to enjoy equal representation.

Thus both opposing parties preferred a single legislative body, but neither would consent to that favored by the other. It was only in order to reconcile their otherwise irreconcilable claims that, contrary to all national traditions, the Swiss bicameral system finally prevailed as a compromise, neither fully acceptable nor entirely unacceptable to either party.

The creation in Switzerland of two Houses on the American model, one of which would represent the cantons equally and the other the people proportionally, to adopt Woodrow Wilson's happy formula,<sup>3</sup> was no mere accident. As has been shown elsewhere,<sup>4</sup> the American Senate and House of Representatives had their admirers in Switzerland ever since 1799. More than once in private writings and public discussions, Swiss citizens had urged the imitation of the American institutions. Twenty years before 1848, Fenimore Cooper had remarked in his *Excursions in Switzerland* that most of "the liberal and enlightened Swiss" with whom he had conversed desired "a Union like our own, in place of the Confederation."<sup>5</sup>

The introduction of the bicameral legislature was per-

<sup>3</sup> Wilson, Woodrow, *op. cit.*, p. 461.

<sup>4</sup> Rappard, William E., *Notre Grande République Soeur*, Geneva, 1916, pp. 33 *et seq.*

<sup>5</sup> Cooper, Fenimore, *Excursions in Switzerland*, Paris, 1836, p. 154.

haps the most significant, but it was far from being the only important change wrought in the public law of Switzerland by the adoption of the Constitution of 1848. Beside the Federal Assembly, as was called the national legislature, composed of the Council of States—the Swiss Senate—and the National Council—the Swiss House of Representatives—an executive was set up under the name of Federal Council. It was made up of seven equal members, no two of whom could be citizens of the same canton. It was to be elected by the Federal Assembly and entrusted with all the duties of a Cabinet. Its chairman, who was to change every year, was to be both the head of the Government and the head of the state, as is the President of the United States. But the President of the Swiss Confederation, as this chairman is called during his annual term of office, was given far less power than his American colleague. He received no rights of appointment, of legislative veto and no more influence over the deliberations of the Federal Council than any of the six other members. Both in the mode of its election and its corporate composition, the federal executive was modelled after the cantonal Governments. The American prototype of a popularly elected president was deliberately discarded in the constitutional debates as being unrepresentative and too dictatorial.

Nor was any attempt made to imitate the American Supreme Court. The Federal Tribunal, as set up in Switzerland in 1848, was hardly more than a committee of the Federal Assembly entrusted with certain very limited judicial duties.

The main purposes of the founders of the new Swiss Republic were twofold. The first, the establishment of a truly national Government, was accomplished by the crea-

tion of the Federal Assembly, the Federal Council and the Federal Tribunal. The second, hardly less important, was the transformation of the league of cantons, which Switzerland had been for five centuries and a half, into a federal state, in all parts of which the citizens should be assured of certain fundamental rights and liberties. In this respect the federal Constitution of 1848, with its provisions guaranteeing to all freedom of establishment, of industry and trade, of conscience, of the press and of petition, was but the counterpart of the revised cantonal Constitutions of 1830. The liberal and Protestant majority, which had secured these rights for itself through the constitutional revolutions of that year, extended them to the whole country by providing for them in the federal Constitution. That this was accomplished against the will of the conservative Catholic minority was abundantly clear.

This minority had resorted to arms in 1847 rather than submit to the will of the majority in the old Diet. It had constantly fought against all the main liberal innovations throughout the constitutional debates in 1848. When, on September 1st of that year, the new draft Constitution was submitted to the electorate, it was accepted by 169,743 popular votes and by a majority of fifteen and a half cantons, but rejected by 17,897 popular votes and by six and a half cantons. All the latter were Catholic cantons, six of which had been the leaders of the *Sonderbund*.

In its main provisions the Constitution of 1848 is still in force today. It has, however, in the course of the last eighty-seven years, undergone thirty-seven partial and one total revision. In this historical sketch, we shall deal only with the latter.

### 3. *The constitutional revision of 1874.*

The movement which culminated in the adoption of the totally revised Constitution of April 19, 1874, had four main objectives which may be defined as national centralization, extended democracy, reënforced anticlericalism and state intervention in the social and economic fields. Except in this last respect, it may be said that the Swiss people in 1874 did no more than to pursue along the same lines the evolution which had been launched under the Helvetic Republic in 1798, interrupted by the reaction of 1803 and 1815, resumed in the liberal cantons in 1830 and generalized for the whole country in 1848. It is therefore not surprising that the Constitution of 1874 met with approval and disapproval respectively in the same quarters as had that of 1848. Of the 340,889 popular votes and fourteen and a half cantons which accepted it, the great majority were Protestant and liberal. On the other hand all the seven and a half cantons which rejected it were Catholic and of the 198,013 negative popular votes, only a small minority were cast in other, mostly French-speaking Protestant, cantons.

The amendments calculated to strengthen the federal state at the expense of the cantons dealt mainly with military and legal matters. The European wars which took place in the beginning of the second half of the nineteenth century and particularly the Franco-German conflict of 1870, which led to the mobilization of the whole Swiss army in defense of the neutrality of the country, had conclusively shown the disadvantages and dangers inherent in the lack of uniformity which then characterized Switzerland's military organization. On the other hand the growing sentiment of national unity promoted by internal

migration and by the rapid development of intercantonal trade had led to the demand for the unification of commercial, civil and finally also of criminal law.

In the second place the development of direct democracy, and particularly the movement in favor of the initiative and referendum which swept over most of the Protestant cantons after 1860, naturally led to the formulation of similar demands on the federal state. Thus the federal legislative referendum was introduced in 1874, while the federal constitutional initiative followed in 1891 and the optional referendum on international treaties in 1921.

The anticlericalism, which is the third characteristic of the constitutional revision of 1874, was the result of both internal and external causes. The persistent and often intolerant opposition of the Catholic minority to all the liberal reforms introduced in 1848, notably in the fields of public worship and of mixed marriages, not unnaturally irritated the majority against the clergy, to whose influence it was mainly attributed. The decisions of the Council of the Vatican, in 1870, which seemed to forebode a still more aggressive policy on the part of the Catholic Church, turned this irritation into exasperation in many quarters. It was thus that the anticlerical provisions of the Constitution of 1848 were reënforced in 1874.

The origin of the new clauses authorizing the federal state to extend its activities in the fields of social and economic legislation was entirely different. The Constitution of 1848 had been the expression of a democratic, but purely liberal and individualist political philosophy. It had freed the individual from the state and subjected the state to the will of the individual. Once freed from the state and master of the state, however, the individual had

soon wished to make the state subservient to the satisfaction of his wants and needs. This very natural evolution, coupled with the development of industrial and commercial capitalism, led to the growth of state socialism or what is more frequently referred to in Switzerland as "étatisme." This factor, perhaps the most significant of recent Swiss political history, was already active in the general revision of 1874 and has since been responsible for most of the subsequent amendments.<sup>6</sup>

4. *The essential contributions of each successive régime.*

Let us now, briefly recapitulating, note what the present political institutions of Switzerland owe to the various developments they have undergone in the course of the past centuries and particularly since 1798.

The traits that have survived the upheavals of the last hundred and fifty years are not very numerous. The only important features which present-day political Switzerland has in common with the mediaeval communities out of which it has emerged are republicanism, unicameral legislatures in the cantons and the corporate form of the executive authorities.

The ephemeral Constitution of 1798, although drafted under French revolutionary influences and imposed by French bayonets on an unwilling country, has paradoxically enough endowed Switzerland with several of its most striking characteristics. It is to that Constitution that Switzerland owes not only its pluri-lingual diversity, but also its recognition of the principles of freedom and equality through the abolition of privileges of birth and place. What makes Switzerland most interesting to the foreign

<sup>6</sup> See in the documentary annexes the text of the Constitution of 1874 as revised up to date.



observer is thus the product of foreign rather than of national circumstances. Subsequent developments have shown that, however unpopular at the time of its promulgation, the Constitution of 1798 was more premature than fundamentally contrary to the constant needs of the Swiss people.

The Act of Mediation of 1803 and the Pact of 1815, being reactions against that Constitution, subtracted much from it, but added nothing permanent to its provisions.

The cantonal Constitutions of 1830 are of particular interest as the first expression of the spontaneous will of the Swiss people. The Constitution of 1798 had been drafted in Paris and imposed by French arms. The Act of Mediation had been dictated by Bonaparte. The Pact of 1815 was the result of negotiations conducted under foreign auspices by representatives of the privileged governing minority. In 1830, on the other hand, for the first time, the true voice of the people could make itself heard. Certain echoes of this voice are still audible today, more than a century later. The real origin of what might be called the bill of rights in the present Swiss Constitution is to be found in the popular demands of 1830 and in the provisions of the cantonal Constitutions drafted in answer to these demands. The democratic features of the present federal Constitution, including the constitutional referendum, are of the same origin.

To the Constitution of 1848 the present régime owes, as we have seen, the general structure of the federal state with its bicameral legislature. In that document also are to be found the springs from which have since flown the centralizing, the democratic and the anticlerical tendencies which characterize the subsequent constitutional evolution.

The most important original contribution of the Consti-

tution of 1874, besides the strengthening of the Federal Tribunal for which it provided, are the clauses on which the present trend towards state socialistic legislation are based.

This hasty historical sketch may, we hope, lend the interest of some social dynamism to the more static description of present-day institutions to which we shall now proceed.

## CHAPTER III

### THE CANTONS AND THE COMMUNES

#### 1. *The Swiss state.*

For the international lawyer there is in Switzerland but one state: the Swiss Confederation. For the man in the street, however, the Confederation is the Confederation and the state is the canton. Thus, in many cantons, the executive is called the Council of State. Thus also the official name of the federal senate, in which each canton has two representatives and two votes, is the Council of States.

This anomaly, which must surprise all foreigners except Americans, since it is common to the United States and to Switzerland, is the obvious product of historical circumstances. For five centuries and a half, as we have seen, Switzerland was not much more than a league of Swiss nations or cantons. Switzerland itself was therefore no more a state than is the present League of Nations, but merely an alliance between sovereign states, as the cantons never failed to call themselves. Even today, when sovereignty has clearly passed from the cantons to the Confederation, the first article in the federal Constitution still speaks of the "twenty-two sovereign cantons of Switzerland."

This anachronistic misnomer points not only to an historical fact, but even to a present-day reality. In the

political life of the average Swiss citizen, the canton and often the commune or municipality loom larger than the federal state. He is the citizen of a commune and of a canton before being a Swiss citizen. The federal Constitution expressly recognizes this priority by providing in its article 43 that "every citizen of a canton is a Swiss citizen." It is to his canton and to his city or village that he pays most of his direct taxes. It is to vote for or against cantonal and communal measures, for or against candidates to cantonal or communal office, that he is most frequently called to the polls. It was, until a generation ago, exclusively, and it still is mainly, on cantonal issues that political parties were and are formed and that many of the most important political battles are won and lost. Most constitutional changes were, as we have seen, wrought in the cantons before they became ripe for consideration by the federal legislature. It is therefore appropriate to outline the structure and functions of the Swiss cantons and of the Swiss communes before discussing those of the federal state.

Our study, however, can be but a brief outline. The cantons, not to speak of the three thousand odd communes, number twenty-two, of which three are each divided into two completely autonomous commonwealths. As all these political units have their own constitutional characteristics, a complete description would require more chapters and even volumes than we can devote pages to the subject.

The cantons, being the product of historical development and not of any administrative legislation from above, are of very unequal size and population. The largest, the Grisons (7113 sq. km.) and Berne (6883 sq. km.) are larger only than the two smallest American states, Rhode Island (3233 sq. km.) and Delaware (6140 sq. km.).

The most populated are Berne (690,249 inhabitants) and Zurich (619,044 inhabitants), the least populated the two half-cantons of Appenzell Interior (13,988 inhabitants) and Obwalden (19,401 inhabitants).

In the first article of the federal Constitution, to which we have referred above, the "twenty-two sovereign cantons" are enumerated in their official order of precedence. This list, into which we have inserted in parentheses the date at which each canton became a member of the Confederation, reads as follows:

Zurich (1351), Berne (1353), Lucerne (1332), Uri (1291), Schwyz (1291), Unterwalden (the Upper and the Lower) (1291), Glaris (1352), Zoug (1352), Fribourg (1481), Soleure (1481), Basle (Town and Country) (1501), Schaffhouse (1501), Appenzell (the two Rhodes) (1513), St. Gall (1803), Grisons (1803), Argovie (1803), Thurgovie (1803), Tessin (1803), Vaud (1803), Valais (1915), Neuchâtel (1815) and Geneva (1815).

Fully to explain and to comment upon this present order of precedence of the cantons, which was finally established in the Pact of 1815, would be to recall the whole history of the gradual formation of the Swiss Confederation. It will be noted that it is neither arbitrary, as it was under the Constitution of 1798, when it was every year modified by lot, nor alphabetical, as it was under the Act of Mediation, nor strictly chronological, nor geographical, nor demographical. Suffice it to say that, already officially recognized in part as far back as 1361, it is roughly based on the principle of seniority of admission. This principle, however, was modified first in favor of Lucerne, because it was a city as opposed to the three purely rural cantons to which it became allied in 1332, and then in favor of Zurich and of Berne, because they were imperial free

cities, whereas Lucerne was still under purely Austrian sovereignty.

It is almost needless to say that the hierarchy thus set up among the cantons is today purely formal. The only effective inequalities the federal Constitution establishes between the otherwise equal members of the Confederation are their representation in the Federal Assembly. In the National Council, the representation according to population results in Berne electing thirty-one and Zurich twenty-eight deputies, whereas the four cantons and half-cantons having less than thirty-three thousand inhabitants each, elect only one. In the Council of States, each canton is represented by two deputies and each of the six half-cantons by one. The origin of these half-cantons is to be found in internal dissensions which it was not possible to settle otherwise than by splitting in two territorially the cantons which were divided against themselves politically. The three cases of divorce thus registered in the course of the constitutional history of Switzerland are of very different dates. Thus the Upper and Lower districts of Unterwalden dissolved their common *Landsgemeinde* as early as 1432. Appenzell fell apart in 1592, as a result of the Reformation, which was embraced in the so-called Exterior Rhodes and repudiated in the Interior. Basle was divided into two half-cantons in 1833, when the former rural subjects of the city refused to remain under the same political roof as their former urban masters.

As regards political structure, each of the twenty-five cantons or half-cantons has its own self-drafted Constitution. In Switzerland, however, as in the United States, the local Constitutions must all conform to a certain federally set standard. But whereas in America this standard is defined in very general terms as being that of "a re-

publican form of government," the Swiss Constitution is more specific. In its article 6 it requires the fulfillment of three conditions. Cantonal Constitutions, in order to be granted the federal guarantee, without which they are invalid, must:

(1) contain no provisions contrary to those of the Federal Constitution;

(2) assure "the exercise of political rights according to republican—representative or democratic—forms of government";

(3) have been accepted by, and be susceptible to amendment at the demand of, the absolute majority of the people.

It is interesting to note that whereas the compatibility of democratic institutions with republican forms of government has been questioned in the United States,<sup>1</sup> they are expressly mentioned in the Swiss Constitution as being, with representative institutions, one of the two alternative modes of that form of government.

## 2. *The two types of cantons.*

When describing the cantonal Governments before 1848, Franscini, a Swiss statistician, who later became a member of the Federal Council, distinguished five different types. There were, he wrote,

A. The eight pure democracies of Uri, Schwyz, Obwalden, Nidwalden, Glaris, Zoug, Appenzell Interior and Appenzell Exterior.

B. The two semi-democracies of Grisons and the Valais.

C. The three representative democracies with the op-

<sup>1</sup> Holcombe, Arthur N., *State Government in the United States*, New York, 1916, p. 37.

tional rights of popular veto of St. Gall, Lucerne and rural Basle.

D. The eleven representative democracies of Zurich, Berne, Fribourg, Soleure, Schaffhouse, Argovie, Thurgovie, Tessin, Vaud, Geneva and urban Basle.

E. The monarchical canton of Neuchâtel.<sup>2</sup>

In the course of the last century, these five types have melted into two, of which one is so predominant in Switzerland today that the other must be mentioned only for its historical and picturesque interest. The eight pure democracies enumerated by Franscini fell to six when, in 1848, Schwyz and Zoug abandoned their traditional *Landsgemeinde* in favor of representative institutions and to five when, in 1929, Uri followed suit. The five remaining pure democracies today represent little more than 3 per cent of the total population of Switzerland. The other twenty cantonal Constitutions all possess representative institutions, which they have all supplemented by the direct democracy devices of the referendum and the initiative.

Before considering the general structure of this representative democratic form of government, let us say a few words of the five surviving pure democracies.

They might be called democracies of the open air type. Their chief characteristic is the fact that the superior power is not only vested in the people as in all other cantons, but is effectively exercised by them in an annual open air meeting. Attendance is theoretically compulsory on all adult male citizens, but in point of fact only a fraction, although as a rule a clear majority, are usually present. The meeting is held on a Sunday morning, in April or

<sup>2</sup> Franscini, S., *Neue Statistik der Schweiz*, 2nd ed., Vol. II, Berne, 1849, p. 2.



May, on a meadow near the capital or in the midst of one of the chief towns. It is presided over by the head of the Government who, as all the other members of the Executive Council, the cantonal representatives in the Council of States, judges and officials, are reëlected or elected by a show of hands. The *Landsgemeinde* further approves the accounts, votes the budget and the other legislative bills submitted to it. In some, the constitutional procedure allows, in others it excludes, a public debate. In all, the tradition which has been handed down from the centuries calls for some religious ceremonies, such as prayers, hymns and collective oaths, which lend the meetings a most impressive character of solemnity and simple grandeur.

It is impossible, even for a stranger, to attend a *Landsgemeinde* without deep emotion. The usually orderly and dignified attitude of the whole male adult population of the canton, collectively conscious of the patriotic significance of the rite they are assembled to perform, in the same place and according to the same procedure as their ancestors have performed it before them for centuries, can leave no one indifferent. From all over Switzerland fathers bring their children to witness the sight, unique in the annals of modern democracy and unequalled as an inspiring lesson of civic freedom and of devotion to the common country.

It would be naïve, however, to believe that even a small community of only a few thousand well-trained citizens could, under the complex conditions of the twentieth century, effectively govern itself by means of such an ephemeral legislative assembly. One might as well expect a football crowd, assembled for a few hours in a stadium, to make itself responsible for the establishment of an aca-

demic curriculum or for the drafting of a measure of social insurance!

The survival of this form of open air democracy has been possible not only because it has a long constructive tradition behind it and because it has not to deal with the delicate problems confronting large urban communities. It has been possible also only because the *Landsgemeinde* is prepared and supplemented by other smaller deliberative bodies. Not only have the *Landsgemeinde* cantons at their service governing commissions and experienced officials who, as in all others, contribute more to the shaping of legislation and to the practical administration of affairs than even the most efficient Parliaments. They have also elected advisory councils whose function it is, in coöperation with the executive branch of the Government, to redraft the reasonable proposals which may have been presented at the *Landsgemeinde* and to discard or discredit the others.

Even so, one cannot help feeling, and deploring, that the *Landsgemeinde* is not a twentieth century institution and that its future is uncertain. It is clearly threatened by the ever increasing complexity of political life and by the rapidly changing character of the people. With the progress of communications and the continual growth of industry and trade, at the expense of agriculture, and with the human migrations which result from them, it is difficult to believe that it can survive indefinitely, except perhaps as a museum exhibit of primitive democracy or rather as a cherished reminder of days gone by.

In the middle of the eighteenth century, there were twenty-six *Landgemeinden* in Switzerland, nine being the legislatures of sovereign communities and seventeen the consultative institutions of subject provinces. All but five

have already disappeared. Moreover as late as 1922 one of them, that of Obwalden, voluntarily deprived itself of all but its elective functions.

3. *The Swiss canton and the American state.*

The twenty other cantonal commonwealths govern themselves by means of representative institutions not fundamentally dissimilar from those of American states.<sup>3</sup>

The main external differences are the Swiss unicameral, as opposed to the American bicameral, legislature, the Swiss Executive Council, as opposed to the American Governor and the less universal application of the referendum and initiative in the United States than in their native Switzerland. One other less apparent but more vital difference relates to the principles of the division of powers and of checks and balances. Whereas these principles still pervade state as well as federal Governments in the United States, they are far less generally respected and less strictly applied in Switzerland.

Let us consider these four differences in turn, before noting the essential similarity between the Swiss canton and the American state, due to the same federal structure of the two Republics.

The cantonal legislatures or Great Councils, as they are usually called, are perhaps the most popular of all Swiss representative bodies. They are the natural first training school for all would-be politicians. Their members, numerous, subject to frequent reëlection and chosen from all ranks of society, are on the one hand in constant touch with the people, from whom they are undistinguishable in daily life. On the other hand they are, with the people

<sup>3</sup> See in the documentary annexes the Constitution of the canton of Berne which we have inserted therein as a sample of a Swiss cantonal Constitution.

themselves, the supreme law-givers who vote the taxes, approve the budget, criticize the Government and even, on occasion, revise the Constitution. They are thus the most important link between the individual and the state.

The following table shows their numbers in each canton, their tenure of office, their mode of election, by proportional or majority representation, and the size and character of their constituencies:

Canton	Number of members	Term of office (years)	Electoral system Proportional (P) or majority (M) representation	Basis of representation. Number of total (T) or Swiss (S) population or of voters (V) for every member
Zurich.....	180	4	P	(3.068) S
Berne.....	228	4	P	3.000 T
Lucerne.....	151	4	P	1.200 S
Uri.....	49	4	M	450 S
Schwyz.....	103	4	P	600 T
Obwalden.....	32	4	M	600 T
Nidwalden.....	54	6	M	250 S
Glaris.....	73	3	P	500 T
Zoug.....	78	4	P	450 T
Fribourg.....	118	5	P	1.200 T
Soleure.....	146	4	P	1.000 T
Basle town.....	130	3	P	(1.193) T
Basle country....	80	3	P	(1.157) T
Schaffhouse.....	76	4	M	700 T
Appenzell E. Rh..	59	3	M	1.000 T
Appenzell I. Rh..	65	1	M	250 T
St. Gall.....	173	3	P	1.500 S
Grisons.....	99	2	M	1.300 T
Argovie.....	215	4	P	1.200 T
Thurgovie.....	146	3	P	250 V
Tessin.....	65	4	P	2.450 T
Vaud.....	219	4	M	450 V
Valais.....	119	4	P	1.100 S
Neuchâtel.....	101	3	P	1.200 T
Geneva.....	100	3	P	(1.714) T

This table calls for two explanations and some comments.

In the first place it will be noted that it refers to the five *Landsgemeinde* cantons and half-cantons, as well as to the others. Although in the former the Great Councils or Country Councils, as they are also called, are in theory only advisory bodies to the popular legislative assembly and have accordingly less members, their functions are in fact not essentially different from the real cantonal legislatures. This is particularly true since, under the referendum which prevails in all cantons today either in its optional or in its compulsory form, laws may or must be submitted to the people for approval before enactment. Direct democracy has thus appreciably reduced the importance of the distinction between legislative and advisory bodies.

The second explanation the table calls for relates to the electoral basis of representation, that is to the ratio between the number of representatives and that of the represented. Whereas in most Constitutions this ratio is fixed and the former therefore varies with the latter, Zurich, the two Basles, Appenzell Interior, Tessin and Geneva have adopted the opposite system. In the Constitutions of these cantons the membership of the Great Council is fixed and the ratio is therefore variable.

It will be noted that, in view of the smallness of the cantons, their legislators are extremely numerous. The Great Councils would therefore be a very heavy burden on the country were it not for the fact that they never meet for long sessions and that their members draw no salaries. As a rule, the latter receive only a nominal sum per day of attendance. The customs relating to the time and duration of meetings vary from one canton to another. All Great Councils, however, have annual sessions, as one of

their main functions, the voting of the budget, is everywhere an annual event.

The tenure of office was much longer than the table indicates before the democratic reforms of 1830, and appreciably shorter immediately thereafter. The present tendency is to prolong it, as the average Swiss voter today is more anxious to reduce than to increase the number of occasions of going to the polls.

In all the cantons, except the Tessin, there are several electoral districts and the members of the Great Council are everywhere elected according to lists. The uninominal system of voting, as it is practiced in Great Britain and France, has never been in favor in Switzerland. Until 1890 political majorities everywhere had their way unrestrictedly, although they were usually wise enough not completely to exclude the representatives of their opponents. As a result of violence, necessitating federal armed intervention, in the Tessin, in 1890, proportional representation was introduced there for the first time in Switzerland. It was even applied to the election of the Government. The violence had resulted from the intolerance of the majority and the corresponding exasperation of the minority. At the elections of the previous year, the conservatives, having polled 51.3 per cent of the total vote, had elected seventy-seven representatives, whereas the liberals, having polled 48.7 per cent, had elected only thirty-five. Since then proportional representation has been gradually spreading all over Switzerland. After two unsuccessful attempts, it finally prevailed on the federal plane in 1919, as we shall see.

The merits and demerits of a system, which makes for more justice and for more peace among the voters, but which tends to multiply political parties according to eco-

conomic or regional interests, to necessitate the formation of coalitions and perhaps to lessen the sense of party responsibility, are much discussed in Switzerland today. As that of most other prevailing political institutions, its popularity has suffered from the prolonged economic depression. Surely with much exaggeration, but perhaps not without some reason, it is blamed for the alarming state of the public finances. As in many cantonal legislatures, as a result of proportional representation, no party has a clear majority, each makes its particular demands on the treasury and none is anxious to assume the responsibility for the defense of budgetary equilibrium.

The unicameral system has never been seriously challenged in any of the Swiss cantons. Based on a very ancient and universal tradition, it is less menaced than ever today, since the general demand is for more governmental economy and for less, rather than more, parliamentary discussion and delay. ✕

Executive power is in all cantons vested in a commission, called the Council of State or Government Council, and is nowhere entrusted to a chief magistrate, as in the United States. The reasons for this difference are obviously historical. Whereas the United States inherited traditions of monarchical, colonial and parliamentary government, in which kings, governors and prime ministers occupied positions of personal leadership and responsibility, all the specifically Swiss traditions were, as we have seen, strictly republican. Although far from democratic before 1830, these traditions were essentially pluralistic, if the term may be used to define the prevailing hostility to all purely personal power. When, in the first half of the nineteenth century, in defiance of all surrounding monarchies, modern democracy in Switzerland succeeded the preceding ré-

gime of traditional democracy, of aristocracy and of oligarchy, it clung all the more eagerly to this pluralism, which seemed to express its own popular ideals and to distinguish them from those of its royal critics. The deliberately antimonistic character of all Swiss Governments today is manifest not only in their Councils of State, but also in the fact that the chairmen of these Councils do not as a rule hold office for more than one year at a time, and are not immediately reëligible as chairmen. In eight cantons, they are chosen by their colleagues, in eleven they are elected by the cantonal legislature, and in six by the people.

The Councils of State themselves, which were formerly elected by the Great Councils, have one after another all come to be elected by the people themselves.

These executive commissions are composed of five members in nine cantons, of seven members in thirteen, of nine in two and of eleven in one. It is curious to note that the two least populated commonwealths, Obwalden and Appenzell Interior, have, the former eleven Councilors of State and the latter nine. This is due to the fact that in these small and poor communities, the salaries attached to these offices are so low that no one expects their recipients to give up their ordinary pursuits on being elected to the Government and to devote their whole time to official business. Even in some of the larger cantons, it is not uncommon for members of the Executive Councils to remain, while in office, engaged in some other gainful occupation. It is, however, coming to be more and more criticized, as the duties of government are becoming more exacting and as the salaries of Councilors of State have been correspondingly raised.

In most of the cantons members of the Executive Com-



missions are reëlected to office on the expiration of their terms as often as their health or their ambitions permit. Consequently, although his terms are relatively short, usually coinciding with those of the legislature, the position of Councilor of State is often looked upon as a life job. This is not the case where there are several parties, none of which enjoys a secure majority and political conditions are correspondingly unstable, as in Geneva or Tessin, for instance. As there are no state pensions for former members of the Government, it is not surprising that public opinion should forgive those who do not, while in office, relinquish all their other business connections.

Both law and custom allow Councilors of State to sit and to vote not only in their cantonal Parliaments, but also, except in the Tessin, in one or another of the Federal Chambers. But seventeen out of twenty-five Constitutions limit to one, two or three the number of those who may simultaneously hold cantonal executive and federal legislative offices. As a matter of fact, the Federal Assembly has always counted among its members an appreciable number of cantonal magistrates. Today all but three cantonal Governments are therein represented, eighteen of them by twenty-two deputies in the National Council and thirteen by an equal number of deputies in the Council of States.

The official duties of the Councilors of State are two-fold: on the one hand they are the administrative heads, each of the department of Government attributed to him by the majority of his colleagues; on the other hand, as co-equal members of the Governing Council, they share in its discussions and in its legislative proposals which, while usually drafted by the head of the department concerned, are always put forward on behalf of the Government as a whole.

The departments, variously arranged and delimited in the different cantons and not infrequently modified in accordance with the changing wishes of the members of one and the same Government, cover the whole field of cantonal activity. As, in spite of the centralizing tendencies which have been at work in Switzerland for the last century, the cantons are still the most important organ of the body politic, there are, besides the essential and omnipresent departments of finance, public instruction, police and justice and public works, special departments, varying according to the cantons, concerned with agriculture, trade, industry, military affairs, public hygiene and assistance.

As a rule, government measures are presented to the Great Council on behalf of an unanimous Council of State. This is the more surprising as the cantonal executives are not always politically homogeneous. Wherever there is a strong minority party, it is usually represented in the Government by one or several of its chiefs. Thus it is not uncommon for the same governing commission to have among its members radicals, that is moderate progressives, Catholic conservatives and socialists. Coöperation between the latter and their colleagues is sometimes made difficult by the demands of party discipline which, as a rule, is the stricter the more revolutionary the party which exercises it. It therefore may happen that a government measure is unsupported and sometimes even attacked in the Great Council by minority members of the Council of State that proposes it.

The election of these minority members in some, although in very few cantons, results from the application of the principle of proportional representation. In the others it is assured by an electoral compromise between opposing parties. (Thus, for instance, in a canton in which

the Council of State counts seven members, the majority party may propose only four, five or six of its own candidates and leave one or several blank spaces on its list. Or it may include therein one or several minority candidates. Thus the struggle between competing groups often centers around one, two or three candidates, whereas the others are certain of a practically unanimous reëlection.

The executive and legislative elections usually take place at the same time or at short intervals one after the other. The majorities in the Councils of State and the Great Councils are therefore, as a rule, the same. It may happen, however, as is the case in Geneva today, that, as a result of the multiplicity of parties and of bickerings among their leaders, the coalition which controls the most votes in the legislature fails to win the majority in the Government. The consequences are almost necessarily unfortunate, as in such exceptional cases no one party can be held truly responsible for the general administration of public affairs. Much more often the mutual confidence existing between the members of the Council of State and between the majorities of the executive and the legislative bodies is sufficient to insure harmonious coöperation.

Direct legislation by means of the initiative and referendum was first introduced into the public law of Swiss cantons a century ago and is today generally prevalent.

In constitutional matters, it is required of the cantons by article 6 of the fundamental law of the Confederation, to which we have alluded above. The compulsory constitutional referendum, which is the basis of all true democracy, was imported into Switzerland from America via the French revolutionary Constitutions of the end of the eighteenth century. This has been conclusively shown by Pro-

fessor Charles Borgeaud, of the University of Geneva, as far back as 1893.<sup>4</sup>

The legislative referendum and initiative, on the other hand, are of distinctly Swiss origin. They are the logical products of the wave of democracy which swept over Switzerland after 1830 and which gave rise to a true frenzy of constitutional reform in the late sixties of the last century.<sup>5</sup>

In its compulsory form, which prevails today in about half the cantons, the legislative referendum makes of the people themselves the sole final legislator as, with certain exceptions, no law can be enacted before it has received popular approval at the polls. In its optional form, which has been preferred by the other eight cantons, all measures, with similar exceptions, must be submitted to the same approval, if, during a certain period after their elaboration by the legislature, a fraction of the electorate, by petition, demands that they should be. This fraction varies from 8 to 20 per cent according to the cantons.

These institutions, which, as we have shown elsewhere,<sup>6</sup> began to be adopted by American states at the end of the nineteenth century in conscious imitation of the Swiss models, but have never succeeded in gaining general approval there, are no longer challenged in the Swiss cantons today. The war and post-war crises, however, have seriously impeded their normal working. Under the stress of financial necessity and considering that it was far

<sup>4</sup> In his well-known work, *Etablissement et révision des constitutions*, Paris, 1893, pp. 27-31, 243, 288.

<sup>5</sup> Curti, T., *Geschichte der schweizerischen Volksgesetzgebung*, 2nd ed., Zurich, 1885.

<sup>6</sup> Rappard, William E., *Initiative, Referendum and Recall in Switzerland*, Annals of the American Academy of Political and Social Science, September, 1912, pp. 110-145.

less difficult to secure popular majorities in favor of public expenditure than in favor of the corresponding taxation, cantonal Governments are tempted to introduce into their fiscal bills a so-called "urgency clause" in order to avoid the pitfalls of the electoral veto.

The legislative referendum is in truth nothing but a right of veto which, instead of being entrusted to the chief magistrate as in America, is given to the majority of the people. On its first appearance in Switzerland, in the middle of the last century, it was in fact called the popular veto. As such it is an essentially conservative measure.

The initiative, on the other hand, may be used for progressive and even for revolutionary purposes. Although it today prevails in all of the Swiss cantons, it is no longer as frequently resorted to as it formerly was. It is only in exceptional circumstances that a measure sufficiently popular to arouse the enthusiasm of the electorate does not find favor with legislatures as democratic and as sensitive to the will of the people as are the Swiss Great Councils. As, furthermore, in Switzerland as elsewhere, political passion is more readily excited against bills or candidates than in their favor, negative referendum petitions are much more frequent than the affirmative initiatives.

Deeper and more significant, although far more elusive than these external divergencies between the Swiss canton and the American state, is a dissimilarity which springs from their very origins. Strange as it may seem, American political institutions, state and federal, belong to an earlier period than that in which their Swiss counterparts were born. Imbued with the spirit of eighteenth century individualism and devised on the morrow of a successful war of independence against a Government deemed oppressive, these institutions seem to express the dominant wish

of their founders to protect the people, and especially the more enlightened and the wealthier classes, against tyranny in all its forms. Whence a scrupulous respect for the principle of the division of powers, which Montesquieu had but recently propounded as being the true basis of liberty. Whence also a desire to avoid the possible excesses of Government action by the establishment of a complex system of checks and balances. In virtue of this principle, the legislator may not interpret the Constitution, but must submit his actions to the review of the courts. In virtue of this system, the Governor may veto the bills of the legislature, but the legislature may impeach the Governor.

When one reads the original American constitutional debates, one feels that most of the statesmen who took part in them wished to play off one organ of the Government against the others. They desired thereby not only to secure wise governmental action, but especially to avoid oppression and confiscatory measures. Their main effort tended to protect the individual against the state.

The Swiss Constitutions, cantonal and federal, belong to a later period. In 1830, when the first popular Constitutions were drafted, the will to protect the individual against the state was still potent. But, combined with it from the start and very soon predominant, was the will to submit the state to the dictates of the individual. Therefore, whereas the American state Constitutions as a rule present the executive, the legislative and the judiciary powers as coördinate and equal, the Swiss never fail to emphasize the supremacy of the legislature. It is through the legislature that the individual formulates his orders and his prohibitions. Therefore, in the first original Swiss Constitutions, the legislature not only laid down the law, but elected the executive, which was to administer, and the

judiciary, which was to interpret it. The notion that the executive could negative the decisions of the legislature by means of a veto was and is as foreign to Swiss constitutional law as is the idea that a tribunal could refuse to apply them on grounds of unconstitutionality.

In the course of a century, these conceptions have been somewhat modified at the expense of the legislature, but they have been modified in favor neither of the executive nor of the judiciary, but solely in favor of the people. The right of veto, which no one ever proposed to grant the Government, was, as we have seen, assumed and exercised by the electorate themselves. As for the judicial review of legislative measures, it has been expressly denied, as far as federal laws are concerned. It has, however, crept in by a round-about path in respect of cantonal laws, as we shall see when dealing with the federal judiciary. To anticipate, we may say that certain cantonal tribunals have begun to refuse to apply cantonal laws which they held to be contrary to the cantonal or federal Constitution, not so much because they felt it their right or their duty to protect the community against errors of the legislature, as because they knew that if they did not, their rulings might be revoked by the Federal Tribunal.<sup>7</sup>

Although the American Constitutions have also undergone a democratic evolution in the course of the last century, their temper remains influenced by their origin. Thus even the democratic revolt against inefficient or corrupt legislatures has, in the United States, taken the form of increased jurisdiction of the courts,<sup>8</sup> whereas in Switzer-

<sup>7</sup> On this complex question see Rappard, William E., *Le contrôle de la constitutionnalité des lois fédérales par le juge aux Etats-Unis et en Suisse*, Bâle, 1934, p. 77, note 104.

<sup>8</sup> Holcombe, *op. cit.*, pp. 358 *et seq.*

land it has led exclusively to the extension of direct legislation.

In spite of the dissimilarities we have noted, the Swiss canton and the American state have many, and especially the three following, essential features in common.

First, they are the constituent and preëxisting members of a federal state. The latter is obviously true in Switzerland. In America, Abraham Lincoln may be quoted to the effect that "the Union is older than any of the states and in fact created them as states."<sup>9</sup> Without wishing to question any American pronouncement on such a matter, a foreigner may still perhaps, without impropriety, be allowed to ask how a country could have come to be called the United States, if there had been no states to unite prior to its foundation. In any case, and although the United States Government has since its birth transformed many territories into states, it is, as Switzerland, a federal state formed to unite and to protect its constituent members.

In the second place, the Swiss canton and the American state both enjoy all the powers, but not more than the powers, reserved to them under the federal Constitution. It is interesting in this connection to compare article 3 of the Swiss, with the Tenth Amendment of the American fundamental law. The Swiss text reads: "The cantons are sovereign in so far as their sovereignty is not limited by the federal Constitution. As such they exercise all the rights which are not delegated to the federal power." According to the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

<sup>9</sup> Special Message to Congress, July 4, 1861, cited in Holcombe, *op. cit.*, p. 4.

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In the third place, in Switzerland as in the United States, historical evolution tends more and more to shift the center of gravity of the political life of the nation from the parts to the whole. In the face of this evolution, the Swiss canton as the American state is therefore clearly on the defensive. It still retains, however, some of the most essential functions of government, such as the maintenance of law and order in the first instance and the promotion of public instruction. In Switzerland as in the United States, direct taxation still belongs primarily to the constituent units, although, especially since the war, they have in both countries been obliged to share it more and more generously with the federal state.

In spite of all differences of size, structure and principle, the Swiss canton and the American state have enough in common to make their comparative study, which we have only been able to outline here, extremely instructive and useful.

#### *4. The Communes.*

Space obliges us to be still more concise in our comments on the Swiss communes or municipalities. Of these there are three thousand and eighty-seven of very unequal size and very unequally divided among the cantons. Only four have over one hundred thousand inhabitants, four between fifty and one hundred thousand, nine between twenty and fifty thousand and fourteen between ten and twenty thousand. Thus there are only thirty-one communes which, according to official statistics, are listed as towns; together they shelter slightly over 30 per cent of the total population. The overwhelming number of communes are therefore small and more rural than urban in character.

Without attempting to analyze and classify these political units, let us but allude to five of their most characteristic aspects.

We may note that every Swiss citizen has, besides, or below, or before, or within, his national and cantonal, one or several communal citizenships. No foreigner can be naturalized in Switzerland who has not previously been declared acceptable as a member by a commune.

Secondly, the commune of origin or home commune, as is called that of which a citizen is a member, is ultimately responsible for him and his family. The federal Constitution assumes that, in case of their absolute indigence, this commune must support them, wherever they happen to be living, although it may of course oblige them to return to their political home.

On the other hand, the federal Constitution expressly allows every Swiss citizen who is solvent to settle in any commune of the country (article 45) and to exercise his full electoral rights of federal, cantonal and communal citizenship there (article 43). This gives rise to an inevitable dualism, which is the third characteristic of the Swiss communal organization. The law distinguishes between the local commune, in which every Swiss citizen has an equal right to vote and is liable to equal taxation after three months of residence, and the commune of origin. As the latter is solely responsible for all its members, wherever they reside, but has no responsibility for its residents belonging to other communes, it sometimes has a corporate estate. This estate is distinguished from that to which all residents contribute by taxation and its management is reserved to the members of the commune.

The fourth characteristic of Swiss communes is that, in spite of countless individual differences, they are on the

whole administered according to the same general methods as the cantons. As the cantons, they have at their head a small executive and a somewhat more numerous deliberative body. The former is usually elected by the people. The latter is sometimes represented by the communal electorate themselves in the form of the New England town meeting. The municipal laws of the larger cities as a rule provide for a municipal referendum, so that these municipalities very much resemble in general structure the cantons to which they are subordinated, but under which they enjoy a very large measure of local autonomy.

Our fifth and last observation relates to the great social and economic activity exercised by most of the more important municipalities. Whether, as is frequently the case, the majority of their administrators represent the socialist party or not, their policies are almost uniformly socialistic in tendency. The growth and present importance today of municipal socialism in Switzerland is such, that it may be said to be characteristic not only of Swiss cities, but of Swiss political life in general.

## CHAPTER IV

### THE FEDERAL LEGISLATURE AND THE WORKING OF DIRECT DEMOCRACY

#### *1. The supremacy of the legislature.*

If an American audience were asked to express by a vote its views on the relative importance of the three branches of the federal Government of the United States, it would undoubtedly be widely divided in opinion and the result would be uncertain. The Congress, that is, the legislature, is mentioned first in the Constitution. It is the most numerous and the most articulate of the three branches. The President, that is, the executive, is on the other hand the most spectacular figure on the American political stage. By his powers of appointment and of veto he is furthermore at certain times and to a certain limited extent the master of the Congress. The federal courts, finally, the Supreme Court in particular, that is, the judiciary, are the august custodians of the Constitution and as such in a way the legal guardians of both the legislature and of the executive. The three branches of Government are, in fact, as they were constitutionally intended to be, coördinate.

Not so in Switzerland. From any Swiss at all familiar with the structure of his Federal Government, the above question could elicit but one reply. As is expressly stated in the fundamental law of the land, "subject to the rights of the people and of the cantons . . . , the supreme au-

thority of the Confederation is exercised by the Federal Assembly." Not only does the federal legislature legislate in legislative as well as in constitutional matters, but it also elects the members both of the executive and of the judiciary and its decisions are subject neither to an executive veto nor to any judicial review. It is in truth supreme as long as it retains the confidence and performs the will of the electorate.

The supremacy of the federal legislature in Switzerland is no more an accident than is the coördination of the three branches of the federal Government in the United States. As we have already noted in the preceding chapter, the state in America was deliberately organized to protect and not to jeopardize the liberties of the individual, while in Switzerland it was devised primarily to carry out his wishes. Hence the mutual checks and balances in the United States. Hence also, on the other hand, in Switzerland, the untrammelled rule of that organ which, directly elected by the sovereign people, was expected to be its most docile and therefore its more powerful servant. Whether this expectation has been fully realized is another matter, about which something will be said later. But that the federal legislature in 1848 and in 1874, as the cantonal legislatures since 1830, were intended to be the chief organs of the state, is clearly expressed in the Swiss Constitutions and may readily be understood in view of their historical origins.

Let us briefly consider how the members of the two Houses which together constitute the Federal Assembly, are elected, what powers are vested in that body and how these powers are exercised.

As was recalled in a previous chapter, the Swiss federal legislature is, since 1848, composed of a National Council

and a Council of States. The mode of election of the members of the National Council, who, as stated in the federal Constitution, are "the deputies of the Swiss people," is prescribed in detail by that Constitution. As for the Council of States, the choice of its members is left to the cantons whose deputies they are.

Every Swiss citizen who has completed his twentieth year and who has not been deprived of his electoral rights under the legislation of the canton in which he has his permanent residence, is entitled to vote for the members of the National Council. As a matter of fact, the proportion of the total population registered as voters is only about 28 per cent, the 72 per cent remaining being made up of Swiss women (47 per cent), of Swiss male minors (16 per cent) and of foreigners of both sexes (9 per cent).

Although the Swiss unanimously consider themselves as living democratically under a régime of universal suffrage, they are actually ruled by much less than a third of the population. The exclusion from the polls of minors and foreigners calls for no comment. But the opposition to female suffrage, which is still very stubborn in Switzerland, may surprise those who think of the country as the home of progressive democracy. Woman suffrage has never been a national issue in Switzerland and on those rare occasions when it has been considered in the cantons, it has always encountered the most decisive hostility. The explanation of this political phenomenon is clearly social. Switzerland is governed by its dominant lower middle class. It is neither an aristocratic nor a proletarian country. Now all history and all geography show that woman comes to her political rights in the drawing-room and in the workshop long before she does so in the kitchen.

## 2. *The Federal Assembly.*

The voters elect the members of the National Council by direct ballot and since 1919 by proportional representation. The latter innovation was introduced by a small majority on a constitutional initiative, after having been twice defeated at the polls in 1901 and 1910. For the election to the National Council, each canton forms a separate constituency. As each elects a member for every twenty-two thousand inhabitants, but at least one, and as they are of very unequal population, the system of proportional representation really comes into play only in the seventeen cantons which have over fifty-five thousand inhabitants and therefore at least three deputies each.

All Swiss citizens qualified to vote in elections to the National Council are eligible for membership in that House, unless they belong to the clerical profession. However no member of the Council of States or of the Federal Council nor any official appointed by the latter can sit in the National Council.

The term of office of the National Council, which, until 1931, was of three years, was then raised to four, as was that of the Federal Council. The members receive no fixed salary but are paid travelling expenses and subsistence allowances from the Federal Treasury for the duration of their effective attendance at legislative sessions. x

The forty-four members of the Council of States are elected according to cantonal not federal law. Whereas, in the early days of the present Confederation, they were all chosen either by the *Landsgemeinde* or by the cantonal legislatures, they have come more and more generally to be elected by the people at the polls. The progress of democracy has had the same results in Switzerland as it

has had in this respect in the United States. Today the Swiss senators are elected at the polls in seventeen cantons, by the *Landsgemeinde* in four and by the cantonal legislators in four.

Their terms of office are of four years in fourteen cantons, of three in eight and of one in three. It is curious to note that three out of the four cantons which still entrust the election of their Councilors of States to the legislature have limited the tenure of office of the latter to the exceptionally short period of one year.

Although elected and also paid by the cantons, the members of what is sometimes erroneously referred to in Switzerland, by analogy with other states, as the Upper Chamber, are not strictly speaking the spokesmen of their cantons. As their colleagues of the other House, they are forbidden by the Constitution to vote on instructions from anyone, not excluding their official constituency. The conditions of eligibility of the Councilors of States are fixed, as their mode of election, by the laws of their respective cantons. The federal Constitution provides, however, that they may not combine their office with that of a member of the National Council or of the Federal Council.

✓The organization of both Houses is similar. For both, the federal Constitution provides that they are to elect a president and a vice-president at each session and that these officers are not reëligible as such at the expiration of their term. A distinctly unconstitutional practice has ever since 1848 led the Federal Assembly to elect officers not at every session, but only once a year. The presidents of both Houses, who are no more than chairmen and who enjoy none of the special privileges of the Anglo-Saxon speaker, thus change every twelve months. In elections they vote as ordinary members. In case of opinions equally divided



among their colleagues, they cast a deciding vote. Their position, which does not carry with it any salary, is one of prominence, however. It is prized as a mark of honor bestowed on old and trusted members. There is a tendency to elect the candidates put forward by the party, and, in the Council of States, by the canton, to whom the privilege is due according to an informal and elastic rule of rotation. It has recently happened, however, that the majority of the National Council, while prepared to accept a socialist as chairman, has rebelled against the candidate, deemed particularly aggressive, who happened to be recommended by his own party. That party was therefore passed over and at the next session presented one of its less provocative members, who was duly elected.

The powers of the two Councils, or sections of the Federal Assembly, as they are officially called, are absolutely the same.

The only distinction enjoyed by the National Council resides in the fact that when both Houses sit together in joint sessions, as they do for executive and judicial elections and on some other very rare occasions, they meet in the hall of the larger body, under the chairmanship of the latter's president. Otherwise equality between the two Chambers is absolute.

No measure can be enacted which has not been fully approved by both. If, after several deliberations and an attempted conciliation by the coöperation of the special committees of both Houses, no agreement has been reached, the matter under discussion is dropped. Such cases of deadlock are very rare, however. It has almost always been found possible to effect some compromise acceptable to both Chambers. The Council of States is perhaps, on the whole, more inclined to concessions than its

more numerous counterpart, as its shorter and less oratorical debates attract less public attention and therefore allow its members a large measure of freedom.

Neither of the Houses has any special rights of priority, not even in budgetary matters. At the beginning of each session the chairmen of the two bodies agree as to the division of labor among them. When, for instance, as is usual, the general budget is first discussed by the National Council, the budget of the Federal State Railroads is attributed to the Council of States.

In both Houses all questions on the agenda are first referred to committees on which all political parties are represented. When such committees reach unanimous decisions, they elect a reporter who presents their views to the House as a whole. In important cases, there are usually two reporters, one speaking in German and one in French. When the matter is both important and warmly controverted, the committees sometimes split into a majority and a minority, each of which presents its case to the House by means of a special reporter. There may therefore be as many as four different reporters, two on opposite sides and two for each of the main official languages.

As the Council of States has less than a fourth as many members as the National Council, each of them has more committee work. The longer time spent in discussions before the whole House in the National Council therefore allows the Councilors of States to attend to their more engrossing committee duties during the sessions, which are always the same for both sections.

The constitutional powers of the Federal Assembly are defined in article 85 of the fundamental law. They are listed under fourteen different headings and it is expressly

stated that the enumeration is not necessarily exhaustive. It is therefore impossible to analyze these powers in all detail. We may note, however, that they are not only of a legislative, but also of an executive, and sometimes even of a judicial, nature.

The legislative powers are those exercised by all other Parliaments. Thus the Federal Assembly passes all the federal laws and legislative ordinances, including those relating to the annual budget and to the annual accounts. Furthermore the Federal Assembly votes on all treaties and on all constitutional amendments. Its legislative powers are therefore exceptionally complete.

As for its executive and administrative functions, they include the elections of the Federal Council, the Federal Tribunal, the Chancellor or permanent head of the civil service, and, in case of war or threat of war, of the Commander-in-chief of the army. The constitutional provision concerning the latter gave rise to much public criticism after 1914. Its result is to place the elected general on the same plane as the civil Government and therefore to free the army from the immediate control of the Federal Council. (To these electoral prerogatives may be added, as executive and administrative powers, the right to declare war, to proclaim amnesties, to pardon offenses against the federal laws, to guarantee the cantonal Constitutions, to dispose of the federal army and to supervise the federal civil service and the Federal Tribunal.)

Finally the Federal Assembly still retains important judicial powers. These were appreciably curtailed in 1874 in favor of the Federal Tribunal, but they still comprise the right to examine and to settle petitions against administrative decisions of the Federal Council and conflicts of power between federal authorities.

When one considers this variety and this wealth of powers, one appreciates both the justification and the significance of the above quoted constitutional provision according to which "the supreme authority of the Confederation is exercised by the Federal Assembly."

Why is it then that the Swiss Parliament does not today seem to enjoy in the public estimation appreciably more prestige than in other countries? The fact in itself is certain, although the Swiss people are far too attached to their political liberties to be seriously tempted to imitate the neighboring dictatorships in their abolition of all representative bodies.

The undoubted loss of popularity which the Federal Assembly has sustained in the course of its existence is sometimes attributed to the recent introduction of proportional representation and sometimes to the earlier growth of direct democracy. Proportional representation, it is argued, tends to multiply political parties and to necessitate the formation of coalitions between them. Thus, it is claimed, in the federal as well as in the cantonal Parliaments, there has been a weakening of responsible leadership and an increase in political bargaining and compromising which has discredited the legislatures and correspondingly strengthened the hands of the executive.

The referendum has also been accused of similar offenses. By giving the electorate the opportunity of vetoing all unpopular bills, it is sometimes said that this institution has lowered the civic standards of the legislators. They have thus been, the critics add, reduced to the rôle of advisers whose suggestions, often rejected by the people, have tended to impair the confidence of the latter in the former.

It would seem, however, that the root of the difficulties lies much deeper. It is the nature of the legislation called for by modern conditions much more than the character of the legislators which accounts for the alleged and often real ineffectiveness of the Swiss as of other Parliaments today.

With the progress of industrial civilization and of consequent state intervention, contemporary legislation has become infinitely more complex and more technical than it was a generation or two ago. Furthermore it tends to the satisfaction of often mutually antagonistic economic wants much more than to the defense of general interests. This dual evolution is necessarily contrary both to the effectiveness and to the prestige of democratically elected legislators. The people feel that their representatives are no longer independent masters of their own work, but often tools in the hands of the experts or puppets on strings pulled by unseen forces. When, moreover, a member of Parliament is admittedly elected to represent not the people as a whole, but only a given regional, sectional or class interest, he cannot expect to command the general respect and confidence formerly enjoyed by recognized social authorities.

Although the federal Constitution expressly forbids members of the Federal Assembly to vote on instructions (article 91), there is no doubt that each of them is elected primarily to represent his personal constituents, that is, to represent both a regional and a class interest. The following table, in which the members of both branches of the legislature have been classified according to their major professions, would in itself suffice to suggest this, even if the ordinary legislative debates did not make it very obvious.

<i>Major Professions</i>	<i>National Council</i>	<i>Council of States</i>	<i>Total</i>
Lawyers.....	36	11	47
Secretaries of trade or other professional unions.....	35	..	35
Farmers.....	22	5	27
Members of cantonal Governments.....	22	13	35
Members of municipal administrations...	14	1	15
Journalists.....	14	..	14
Merchants.....	9	1	10
Manufacturers.....	5	1	6
School teachers.....	5	1	6
Judges.....	5	2	7
Physicians.....	4	..	4
Engineers.....	3	1	4
Other occupations.....	13	8	21
	187	44	231*

\* Cf. "*Membres des Chambres et du Conseil fédéral*, publié par le Secrétariat de l'Assemblée fédérale," Berne, 1935; "*Annuaire des autorités fédérales* publié par . . . avec le concours du Secrétariat des Chambres fédérales," 19th ed., Berne, 1936.

The decline of the legislature, which may be observed in most countries today, is perhaps, for an additional reason, particularly striking in Switzerland. The stability of the Federal Council, whose members usually remain in power for long periods, has had a doubly weakening effect on the Federal Assembly. Chosen from among the most intelligent and ambitious members of either House, the Federal Councilors naturally acquire in the course of their governmental career an experience and a technical ability which allows them easily to outmarch and to dominate the legislature.

This is the more readily accomplished as security and permanence of tenure of the Federal Council deprive the Federal Assembly of those members who, in other coun-

tries, are the natural parliamentary leaders, namely, former members who have acquired experience in office and who are impatient to take the place of those who have succeeded them. Thus, in Switzerland, one always has the impression that the Federal Council, when defending its policies before the Federal Assembly, is in the position of a professional team opposed to an aggregation of amateurs.

Often as Government measures approved by the Federal Assembly are repudiated by the people at the polls, they are very rarely thrown out or profoundly amended in the course of parliamentary discussions. This was not so in the first years after 1848. At that time, when the problems before the country concerned matters of federal organization, of political principles and of general interests and when the members of the Federal Council enjoyed no more experience than their critics in the Federal Assembly, the legislature not infrequently imposed its will on a reluctant and less influential Government. Today, in spite of all the constitutional prerogatives of the Federal Assembly, the lead has clearly passed to the Federal Council. The people, however, through the federal initiative and referendum, have gained an appreciable part of the real legislative power lost by their representatives.

### *3. Direct Democracy.*

Three institutions of direct democracy exist in the Swiss Confederation today in the shape of the compulsory constitutional referendum, the constitutional initiative and the optional legislative referendum. Let us first recall the origin and significance of each of these three instruments of popular government and then consider the use to which

they have been put in Switzerland in the course of the last nine decades.

By compulsory constitutional referendum we mean the right of the electorate to accept or reject at the polls by a direct majority vote any proposed modification of the fundamental law of the land. It is the expression of the will of the people to be subjected to no rule but that of their own preference as manifested by a free majority vote. In Switzerland it was provided for by the Constitution of the Helvetic Republic in 1798 which was not itself, however, submitted to a vote of the people before its enactment. In 1848, on the other hand, the new fundamental law came into force only after receiving the approval of the electorate and of the cantons who had been called to pass upon it in accordance with its final provisions. Article 114 of that law read as follows:

"The revised Federal Constitution shall come into force when it will have been accepted by a majority of the Swiss citizens taking part in the vote and by a majority of the cantons."

The latter requirement is a tribute paid by democracy to history. Prior to 1848, the canton as we have seen, enjoyed a measure of sovereignty such as to make it doubtful whether they could legally be bound by any constitutional decision in which they had not concurred. As the overwhelming majority of the Swiss people wished to create a federal state but as the unanimous concurrence of all the cantons was not obtainable, the above solution was proposed as a compromise, and imposed on a reluctant minority of six cantons and one half-canton which were forced into the new Confederation although they had voted against its Constitution. This provision has remained in force ever since. It is fortunate for its validity and for



the peace of the country that, except in one minor instance in 1866, the majority of the people and that of the cantons have always been on the same side in all votes on constitutional amendments.

The constitutional initiative is the right of a given fraction of the electorate to propose an amendment to the fundamental law. This right may be exercised in two ways, directly and indirectly.

The Constitution of 1848, as well as that of 1874 in its original form, provided only for the latter. They obliged the Government to submit the question of the revision of the fundamental law to the electorate whenever fifty thousand qualified Swiss voters petitioned that it be so submitted. Although the drafting of the relevant clauses left the question open to some doubt, it was officially held that this right referred only to the total revision of the Constitution and not to any particular amendment.

In 1891 the Federal Council proposed and the Federal Assembly adopted a constitutional amendment introducing the other more direct form of the initiative. While retaining the right to demand a referendum on the general desirability of a total revision, the same fraction of the electorate then received in addition the right to submit a specific amendment to the people. This can be done either by submitting an amendment definitely drafted or a proposal expressed in general terms. In the first case, the draft amendment is immediately submitted to the people either with or without a counter-amendment proposed by the majority of the Federal Assembly. In the latter case, the Federal Assembly is entrusted with the task of drafting an amendment embodying the suggestions of the petitioners. When these suggestions meet with the approval of the parliamentary majority, this presents no further

difficulty. When not, the people are first consulted as to whether they share the views of the petitioners or those of the legislature. In the first case, the Federal Assembly is obliged to carry out the will of the popular majority. In the latter, the matter is dropped.

The optional legislative referendum is the right of the electorate to accept or reject a bill voted by the legislature when, before its enactment, a given number of petitioners demand that it should be submitted to the vote of the people. This institution, which had before been adopted by many of the cantons, was in 1874 introduced into the federal Swiss Constitution. The relevant provisions read as follows:

"The federal laws are submitted to the approval or rejection of the people, if thirty thousand qualified voters or eight cantons demand that they should be. The same rule applies to federal ordinances when they are of general importance and not of an urgent character."

In 1921 these provisions were extended to "international treaties concluded for an indefinite period or for more than fifteen years."

It may be noted with some surprise that whereas both the Constitution and all ordinary legislation are subject to the referendum, the initiative applies only to constitutional amendments. It is therefore in theory easier for the Swiss people to amend their fundamental law than their ordinary statutes against the will of a hostile Parliament. This anomaly is due to the opposition of the Swiss federalists. They have so far successfully combated the introduction of the legislative initiative on the following grounds:

The Constitution can be amended only by the double majority of the electorate and of the cantons. Ordinary

legislative bills, on the other hand, when passed by both Houses of Parliament and submitted to the referendum may become law even against the will of a majority of the cantons when approved by a majority of the electorate. As long as no statutes can originate outside the Federal Assembly, the rights of the cantons are protected by the Council of States. This would no longer be the case with the legislative initiative unless it called for the same double majority as is required for constitutional amendments. If, on the other hand, the double majority rule was extended to the legislative referendum, the only distinction still existing between constitutional and ordinary legislative measures would disappear.

As a matter of fact, the result of this anomaly is to efface this very distinction. In the absence of the legislative initiative, it has become a common practice to seek, by means of the constitutional initiative, to introduce into the fundamental law provisions which would otherwise have been drafted as ordinary statutes.

The use which the Swiss people have made of their tools of direct democracy is roughly shown in the following table.

<i>Period</i>	<i>Constitutional referenda</i>		<i>Constitutional initiatives</i>		<i>Parliamentary counter-proposals</i>		<i>Legislative referenda</i>		<i>Total</i>	
	<i>Number</i>	<i>Accepted</i>	<i>Number</i>	<i>Accepted</i>	<i>Number</i>	<i>Accepted</i>	<i>Number</i>	<i>Accepted</i>	<i>Number</i>	<i>Accepted</i>
1848-1874	12	3	..	..	..	..	..	..	12	3
1874-1914	20	14	8	2	1	1	31	12	60	29
1914-1935	18	16	17	4	3	2	13	3	51	25
1848-1935	50	33	25	6	4	3	44	15	123	57

It appears therefore that, in the course of the last eighty-eight years, the Swiss people have been called to the polls one hundred and twenty-three times to express their opinion on some piece of constitutional or statutory legislation, that is, on an average about 1.4 times a year. The increasing popularity of direct democracy in Switzerland is shown by the fact that, whereas the average number of these plebiscites was 0.4 a year under the régime of the Constitution of 1848, it increased to 1.5 from the adoption of the Constitution of 1874 until the outbreak of the World War and has risen to 2.4 in the war and post-war period.

As we have seen, the constitutional referendum was the only form of direct democracy in the federal state until 1874. Since then the legislative referendum has been resorted to forty-four times, whereas constitutional amendments have been submitted to the vote on sixty-seven occasions, that is thirty-eight times as the result of ordinary parliamentary action, twenty-five times as a direct result of constitutional initiatives, and four times on counter-proposals submitted by the Federal Assembly in opposition to such initiatives.

The actual effects of direct democracy may be measured first by the number of constitutional and statutory measures adopted by the legislature and subsequently rejected by the people. The proportion of such conflicts between the electorate and their representatives is surprisingly great. Of fifty constitutional amendments spontaneously proposed by the Federal Assembly, seventeen, that is 34 per cent have been rejected. It will be noted that this proportion has become steadily smaller as the legislature has become more cautious in the course of successive decades. From 75 per cent in the first period, it has fallen to 30 per cent in the second and to 11.1 per cent in the third.

The same test can of course not be applied to the legislative referendum. As it is optional, it is used only against a very small minority of statutory measures. However, when it has been used it has proved very effective. Of forty-four bills challenged by the people, only fifteen, that is 34.1 per cent, have survived its judgment. Since the war, the legislative referendum has been resorted to more sparingly—on an average 0.6 times a year from 1914 to 1935 as against 0.77 times a year between 1874 and 1914—but with greater effect. From 1914 to 1935, ten bills out of thirteen, that is 76.9 per cent have been defeated, whereas before the war the proportion was only 61.3 per cent.

The number of bills actually rejected at the polls is of course no more the true measure of the effectiveness of the optional referendum than the number of executions is the true measure of the effectiveness of capital punishment. It is a well-known fact in Switzerland that the fear of popular repudiation is often a more potent factor in preventing the adoption by Parliament of certain legislative measures than the actual repudiation itself. This is so true that in the present crisis the Federal Assembly has repeatedly declared urgent, in order not to expose them to the referendum, certain fiscal measures which it deemed essential but knew to be unpopular.

Our figures also show that the effective influence of the initiative is much slighter than that of the referendum. Of twenty-five constitutional amendments, only six, that is 24 per cent, have been adopted by the people against the judgment of their representatives. It is true that in four cases the Federal Assembly has been led to take the edge off initiative proposals by submitting counter-proposals, of which three were adopted by the people.

So much for the quantitative results of direct democracy in the Swiss Confederation. Its qualitative effects are of course impossible to assess with equal precision and still more to appreciate with equal certainty. The six following observations may, however, be presented with sufficient assurance.

First, as has often been noted by students of the working of the initiative and referendum in Switzerland, the legislators who have championed measures rejected by the people have in no way been made to suffer for their attitude. As a general rule the Swiss tend to reelect representatives whom they have disavowed, unless they have reason to suspect their patriotism.

Secondly, it has repeatedly happened that measures have been adopted by the people after one or two previous refusals. Thus, after 1848, a more highly centralized Constitution was rejected in 1872 and adopted with some modifications two years later. Thus a federal banknote monopoly was rejected in 1876 and again in 1880, but finally accepted in 1891. Thus, after a constitutional amendment authorizing the introduction of a federal illness and accident insurance had been adopted in 1890, a statute implementing it was rejected in 1900, but accepted in a slightly amended form in 1912. Thus also, proportional representation for the election of the National Council was adopted in 1918, after having been twice refused in 1900 and 1910. Several other instances could be quoted to show that the Swiss people are not at all loath to change their minds. In fact one often feels that they reject measures more in order to test their real need and the tenacity of their advocates than out of a spirit of determined opposition.

Thirdly, the resolute hostility of the great majority of

the nation to extreme demagogic measures has repeatedly been made manifest. The crushing defeats inflicted on a socialistic "right to work" initiative in 1894, on a confiscatory capital levy proposed in 1922 and on the revolutionary so-called "crisis initiative" in 1935 are cases in point.

On the other hand, fourthly, there has been a marked evolution in the popular mind towards state intervention in the course of the last two generations and especially since the war. In fact revolutionary proposals put forward by the socialist party have often been combated by very similar measures deemed safe and constructive when recommended by their more governmentally-minded opponents.

Fifthly, although the Swiss have an ingrained love of order, they have a still profounder dislike for all police measures intended to repress disorder. Proposals tending to limit the freedom of individual self-assertion have therefore never found favor with the majority at the polls.

Sixthly and finally, the Government has never appealed in vain to the spirit of patriotic sacrifice when the interests of national security seemed to justify such appeals. Thus in 1907 and again in 1935, the people readily enhanced their personal and financial burdens by agreeing to an aggravation of their military duties. Thus also during and immediately after the war, extraordinary measures of federal taxation were expressly adopted at the polls, although in normal times fiscal proposals are not unnaturally the most unpopular.

If one were to ask the man in the street in Switzerland whether his country was on the whole satisfied with the results of her experiments with direct democracy, the answer would undoubtedly be in the affirmative. Indeed, he might take exception to the term of experiments in

this connection. The experimental stage is over and with it have gone as well the misgivings of the early enemies of the initiative and referendum as the blind enthusiasm of its first friends. Although one occasionally hears protests on the part both of impatient reformers, who resent the delays and checks inherent in the referendum, and of harassed voters, who complain of the excessive demands made on their spare time by all too eager politicians, no one seriously proposes to do away with the two institutions. Having been introduced gradually and having conquered the cantons one after another and finally the Confederation as well, they have clearly come to stay. The recent cases in which the Federal Assembly, subordinating its legal scruples to practical considerations, has debarred the people from expressing their opinion at the polls on certain fiscal measures, have not given rise to much protest. The average citizen seems to have felt that the end—financial security of the country—has sanctified the somewhat unconstitutional means.

Even the small minority of young Swiss who are favorably impressed with the efficiency of neighboring dictatorships usually spare the initiative and referendum in their criticism of Swiss institutions. If they should ever come into power, which is hardly conceivable, they would probably do away with the Federal Assembly or at least with the National Council before attacking direct democracy. Even they feel that to attack these institutions, which are tributes paid by the Swiss people to their common sense and political maturity, would be to attack the Swiss people themselves. As tributes, they are flattering, even if perhaps not fully deserved, and as instruments of government, they are highly prized and jealously guarded.



## CHAPTER V

### THE FEDERAL EXECUTIVE AND THE FEDERAL JUDICIARY

#### 1. *The Federal Council.*

The Swiss Federal Assembly, as we have seen, was set up in conscious and deliberate imitation of the American Congress. It was therefore natural that, in devising the structure of the executive authority, the authors of the Constitution of 1848 should have considered also the position and functions of the President of the United States. In spite of their political imagination, however, of which they had given sufficient proof by adopting a bicameral legislature entirely foreign to all Swiss tradition, they had no hesitation in disregarding the American precedent when it came to establishing the executive.

In the report of the committee which drafted the fundamental law of 1848, we note that its members were not unconscious of the advantages of unity and continuity of action inherent in an elected president. But they added:

"The committee could not think of proposing the creation of an office so contrary to the ideas and habits of the Swiss people who might see therein evidence of a monarchical or dictatorial tendency. In Switzerland one is attached to councils. Our democratic feeling revolts against any exclusive personal prééminence."<sup>1</sup>

<sup>1</sup> *Rapport de la Commission qui a élaboré le projet de Constitution fédérale du 8 avril 1848*, Lausanne, 1848, p. 65.

Accordingly the Constitution in 1848, the relevant provisions of which are still in force today, entrusts "the directorial and superior executive authority of the Confederation" to a Federal Council composed of seven members.

The commission thus constituted is elected for a term of four (until 1931, three) years by the Federal Assembly meeting in joint session shortly after the quadrennial (until 1931, triennial) elections of the National Council. Any Swiss citizen eligible to the National Council is eligible for the Federal Council, but no two members can be chosen in the same canton.

These brief provisions of the federal Constitution relating to the composition of the Federal Council are supplemented by two unwritten but constantly obeyed laws. According to the first of these, the three cantons of Berne, Zurich and Vaud have always been represented by one of their sons in the federal executive. Argovie also has almost always enjoyed the same privilege, although it happens to be deprived of it today. For the two first of these cantons, the reasons are both historical and demographic. Berne and Zurich have ever since the earliest times been the two leading cantons of the Confederation and they have today, as we have seen, by far the most inhabitants. Vaud is by area and population the largest of the purely French-speaking cantons. As for Argovie, its privileged position is due to political circumstances. In point of population it is only the fifth of the cantons, but as it has always produced some of the most prominent politicians of the ruling party, it has taken precedence over St. Gall, which comes fourth in order of demographic importance and which was long one of the most active commercial centers of the country.

Another unwritten law has it that not more than five

members of the Federal Council shall be chosen in the German-speaking cantons. Thus, besides Vaud, either another of the French-speaking cantons or the Italian-speaking Tessin or both have always been represented.

Thus custom in Switzerland has fully settled the vexed problem of permanent and non-permanent members and of regional representation which, in the League of Nations, has given rise to so many difficulties and so acute jealousies.

The office of Federal Councilor is incompatible with any other private or public cantonal or federal position or profession. The members of the Government, while they have a seat and a voice in both Houses of the Federal Assembly, can belong to neither as members. They are paid a salary from the Federal Treasury. This salary has gradually risen from 5,000 francs in 1848 to 35,000 Swiss francs today.

The Federal Assembly annually elects the chairman and vice-chairman of the Federal Council. During his year of office as such, the chairman is President of the Swiss Confederation. After that year, he can be reelected neither as chairman nor as vice-chairman. As a matter of fact, the members of the Federal Council are in turn elected first to the vice-chairmanship and then to the presidency by order of seniority. When a new member joins the Council, he has to await the reelection of all his older colleagues before he becomes first vice-chairman and finally President of the Confederation.

The latter office carries with it, besides a slight additional salary, the duty of presiding over the debates of the Federal Council and the right of representing the country on all official occasions, both as head of the state and of the Government. Although it is sometimes made much of

by the personal friends and cantonal fellow-countrymen of the incumbent, especially on the occasion of his first election, it has no true national significance. It confers no special privilege nor even any particular influence. One may therefore safely say that, although most Swiss citizens can recall the names of at least a majority of the members of the Federal Council, they are as apt as not to forget that of the *pro tempore* President of the country.

The position of the Swiss executive is thus essentially different not only from that of the American President and of his Cabinet, but also from that of most other democratic Governments. Unlike the Cabinets of American and of most parliamentary Governments, the members of the Federal Council, all absolutely equal in status, have not been chosen by one chief. For over two generations, they have even belonged to different parties. Although all Government measures are presented by the Council as a whole, those members who happen to disagree with any special measure are free to let it be known and are not therefore called upon to resign. As a matter of fact, such an occurrence is very rare. If repeated, it would obviously weaken the Government as a whole and make the position of the chronic dissentient wellnigh impossible. Resignations for political reasons have therefore taken place from time to time, but they are very exceptional.

Like the President of the United States, but unlike most parliamentary Governments, the Federal Councilors cannot be members of the legislature. But unlike the President and his Cabinet, the Federal Council is always represented on the floor of each House, as in all parliamentary Governments, whenever any important bill is under discussion.

The most distinctive feature of the Federal Council,

however, is its stability. This characteristic is one which no comparative analysis of national Constitutions could reveal. It is the result not of any specific legal provision, but of an ancient tradition which the Confederation has inherited from its cantons. It is the result also of the remarkable continuity of political conditions which has characterized the history of Switzerland during the last century.

As the Federal Council is elected by the Federal Assembly, the composition of the former must obviously be the political reflection of the latter. Now, as we shall see in the next chapter, from 1848 until today, the same party has always been the strongest in the Federal Assembly. Although it is far from enjoying an absolute majority today, it has, for the purposes of the election of the Federal Council, formed a coalition which, as long as united, can always assure the victory of its candidates. If that coalition should ever be disrupted or beaten by its socialist opponents and if no new coalition could be found embodying the latter, the traditional stability of the Government would be at an end in the Confederation, as it already is in several cantons which formerly enjoyed it.

As it is, the stability has been extraordinary. From 1848 until today, there have been only fifty-six Federal Councilors. The average individual tenure of office has therefore been 5.57 years. (As, before being elected to the Federal Council, its members have usually had prolonged experience in the federal legislature and often in one of the cantonal Councils of State, they do not begin their federal executive careers as young men.) The average length of these careers is therefore all the more remarkable.

The constitutional powers of the Federal Council are similar to but rather greater than those of most foreign

Governments. In addition to its normal executive functions, it is entrusted with the duty of settling many administrative disputes which in other countries are referred either to the ordinary law courts or to some special tribunal.

Here again, however, the analysis of the Constitution itself, even supplemented by that of the statutes enacted in application thereof cannot give a true picture of the importance of the Federal Council in the structure of the Swiss Confederation. In order to understand the effective importance of the executive branch of any Government, one must consider its relations to the other organs of the state capable of influencing its action. These organs, if we leave out the crown in monarchical countries, are the legislature, the civil service and the judiciary.

Switzerland possesses no administrative tribunal which could in any way interfere with the activities of the Federal Council. There remain therefore to be considered only the Federal Assembly and the civil service, to which must be added the uncrowned kings of Switzerland, that is the sovereign people.

The relations of the Federal Council to the Federal Assembly afford an interesting illustration of the havoc political circumstances can play with the Constitution of a country utterly averse to all revolutionary change. There is no doubt that the authors of the fundamental law of 1848, as well as their successors, the legislators of 1874, meant what they said when they declared that the Federal Assembly was to exercise the supreme authority in the state. But, as Bryce, speaking of the Federal Council, has truly noted,

"Legally the servant of the legislature, it exerts in practice almost as much authority as do English, and more

with the  
Fed. Assembly

15

than do some French Cabinets. It is a guide as well as an instrument and often suggests as well as drafts measures.”<sup>2</sup>

We would be inclined to go even farther and to suggest that the influence of the Federal Council on the Federal Assembly is, if less spectacular, actually more rather than less decisive than that which the British Cabinet exercises on the House of Commons. Not only are its members the most important leaders of their party, as in England, but they normally and not only exceptionally, as is the case of the present national Government in London, represent the great mass of parliamentary opinion.

Let us consider the genesis and gradual elaboration of legislative measures in Switzerland. The first suggestions usually spring from the people themselves. A new idea is launched and discussed in the daily press or in some local group of citizens. It may then be adopted by some party and formulated in its program. Later it may be either taken up by the Federal Council itself or recommended to it by a vote of the Federal Assembly. In both cases the translation of the idea into a draft bill is undertaken not by the legislature but by the executive.

The bill and the message explaining its purpose are drafted by a member of the Government in person, or by one of his permanent officials, or by an outside expert specially selected for the task by the Federal Government. When these documents have been discussed and approved by the Government, the bill, preceded by the message, is printed in the official journal called *Feuille Fédérale*, signed by the President of the Confederation on behalf of the Federal Council and submitted to the Federal As-

<sup>2</sup> Bryce, James, *Modern Democracies*, Vol. I, London 1923, p. 397.

sembly. It is then examined by a parliamentary committee in the presence of the Federal Councilor under whose department it falls. It is customary for this member of the Government to attend the committee meeting in the company of one or two of his officials or of the unofficial draftsman of the measure. These meetings, which are held in Berne or, preferably in the Summer season, at some pleasant hotel in the mountains or by some lake, last a day, a few days or, in the case of some exceptionally important measures, a few weeks. ✓ ✓

It is not necessary to have attended many such meetings to understand why the principal actors are rarely the legislative members. They have come from their respective constituencies and from their respective professions or trades to devote a few hours of study to a bill about which they may have known nothing whatever before and about which they are apt to forget much when they return to their homes. The members of the Government, on the other hand, who quite likely may have spent the better part of the preceding months preparing the bill and who come fresh from the debates in the Federal Council, expound and defend their proposals much as an academic lecturer addressing a body of more or less interested students. He is assisted by his experts who often take an all the more active part in the committee proceedings in that they are not allowed to appear before the legislature later on, when the bill comes up for the public debate there. ✓

The draft bill is then approved by the committee whose majority very seldom opposes or appreciably modifies it. The member or members who are chosen to report on it to the House prepare their statements, often again with the help of the Government experts. Before the House



itself, the most important speeches are usually those of the representative of the Federal Council in charge of the bill. Having seen it safely through one of the Chambers, he has then, after the same preliminary committee discussions, to see it through the other.

When one visualizes this whole legislative procedure, one is forced to admit that the most responsible and influential work is that not of the so-called legislature, but of the executive. In actual truth and in contradiction to the constitutional fiction, the Federal Council thus exercises legislative as well as executive and administrative functions.

Whereas the Government in Switzerland thus guides the legislature more effectively than it does in most other countries, its greater stability, which is the real secret of its influence, also makes its members less dependent on the assistance of its not much more permanent officials. Where ministers come and go frequently, as in most parliamentary Governments, the true, although hidden masters of the state are the higher civil servants who remain. Where, as in Switzerland, the ministers remain as legislators come and go, their authority as political leaders, which they seek to retain by actively attending all the more important party meetings, is correspondingly enhanced by their technical ability. At the same time is enhanced also their authority over their civil servants. These often respect in the Federal Councilors not only their official superiors and the public defenders of their professional work, but also their senior colleagues and more experienced fellow-experts.

Such has been the case for several generations in the past. Whether it will remain so in the future is much more doubtful. As the authority of the party which has

made present-day Switzerland what it is wanes, the stability of the Federal Council is more and more threatened and politics tend more and more to interfere with policy. Already the average tenure of office of the Federal Councilor, which was of 5.12 years from 1848 to 1874, and 4.37 years from 1874 to 1914, has since fallen to 3.82. As the business of government grows in volume and in complexity, it is becoming more and more difficult for the members of the Government to master it in all its technical details. The successive resignation of several Federal Councilors since the war, perhaps not uninfluenced by the recently introduced system of retirement pensions, is a somewhat disquieting symptom. The weakening of the executive branch would be all the more alarming for the country, as the growth of its power and influence at the expense of the legislature in the past has made of it the mainstay of the Government.

## *2. The federal departments.*

Before turning from the executive to the judiciary, let us mention that, like the cantonal Councilors of State, the federal Councilors are both equal members of a collegiate body and administrative heads of separate departments. As we have observed, all legislative measures, even when they concern only one department, are presented to the Federal Assembly on behalf of the collegiate body as a whole. All important appointments also are made by the Federal Council acting in its corporate capacity. The right of appointment to minor offices can be delegated to the departments, but only in virtue of a legislative decision. In constitutional theory, the autonomy of the latter is therefore very strictly limited. In practice, of course, each

member of the Government being responsible to the body of his colleagues for the administration of his department, asserts the natural right of choosing his principal assistants. Nor is it very common for the Federal Council as such to oppose legislative bills dealing with departmental affairs when submitted by the head of the department concerned. However, as all important measures presented to the Federal Assembly may give rise to a referendum and as the unpopularity of a bill may therefore have very unpleasant consequences for the Government as a whole, the collective responsibility of the latter is no mere fiction.

The meetings of the Federal Council are never held in public and no minutes are published of the executive debates. In spite of this natural discretion, one not infrequently hears, however, that there has been some unexpected hitch and sometimes even that a given measure has been referred back to its author, because it has failed to meet with the approval of his colleagues.

The seven departments, the respective jurisdiction of which is delimited by the legislature, are the following: the Political Department (foreign affairs), the Department of Public Economy (industry, trade, agriculture and labor), the Department of Justice and Police, the Financial and Customs Department, the Military Department, the Department of Posts and Railroads and the Department of the Interior.

For many decades, the first of these was always entrusted to the President of the Confederation. This was deemed to be both consonant with the prestige of the supreme office and beneficial to the interests of the country as a whole. It was felt that the exceptional importance of foreign affairs required the special attention of all the members of the Government in turn. This system, which

of course disrupted the distribution of departments, was abolished towards the end of the last century, although it has intermittently been reintroduced from time to time. Since the war it is no longer in force and that is how Switzerland has had in Mr. Motta the same foreign minister for the last twenty years.

The Department of Public Economy, whose budget represents nearly a third of the whole, even including the service of the public debt, has grown out of all proportion with the others in the course of the last generation. This is due in part to the economic policies pursued. It is perhaps due also to the voracious ambition of its late head who, in the course of his twenty-five years of office, had gradually absorbed activities more normally distributed among two or three other departments.

As for the Federal State Railroads, they are placed under the supervision of the department which bears their name. They are, however, managed by an autonomous organization not under the immediate control of the Government.

It will be noted that the Federal Government lacks such ministries as those of public instruction or public works which are usually to be found elsewhere. The reason for this, obvious to American readers, is that these branches of state activity belong to the cantons. There are no federal roadways and the only federal institution of learning is the Polytechnicum in Zurich. (This is placed under the control of the Department of the Interior. This curious department, which is usually entrusted to the last elected member of the Federal Council on his arrival in Berne, is called upon to deal with the most heterogeneous objects, such as museums, public buildings, forestry, hydraulic resources and fisheries. The only characteristic these matters

have in common, is that it has not been found convenient to attribute them to any of the other departments.

✓ 3. *Swiss and American federal judiciaries contrasted.*

While the Swiss Federal Assembly is a faithful replica of the American Congress and while the Federal Council, although in many ways unlike the American President and his Cabinet, may in some respects be compared with them, the federal judiciaries of the two Republics stand in striking contrast one to the other. They differ in origin, in jurisdiction, in power and in organization as well as in the numbers, mode of election and tenure of office of the judges.

Let us briefly consider these various points in turn.

The Federal Tribunal in its present status is a product not of the Constitution of 1848, which set up the Federal Assembly and the Federal Council, but of the Constitution of 1874. The earlier law, to be sure, had already provided for a court "for the administration of justice in the federal sphere," but in its organization, in its composition and in its very narrow jurisdiction, it was entirely subordinate to the two other branches of the Government.

Its eleven members were elected for three years by the Federal Assembly and their term of office was limited by that of the National Council, to which many of them belonged. Although the Constitution debarred Federal Councilors and officials appointed by them from the bench, the members of the Federal Tribunal were not professional judges. They were paid only a modest compensation for the days devoted to their judicial duties. The court had no regular seat, but usually met at Berne. Its jurisdiction did not extend to conflicts of public law between the Confederation and the cantons or between the latter. These were

dealt with by the political authorities. Even civil law cases between the Confederation and the cantons could be settled by the Federal Tribunal only if and when they were referred to it by the Federal Council or by the Federal Assembly. As for complaints about the violation by governmental authorities of the constitutional rights of the individual, they could be entertained by the Federal Tribunal only if and when referred to it by the legislature. Such complaints were common. In all but one single instance, however, from 1848 until 1874, they were dealt with finally by the Federal Assembly. The legislature was reluctant to divest itself of what, in view of the uncertain state of the law, it held to be a legislative more than a judicial function.

These abnormal and unwholesome conditions were done away with by the Constitution of 1874. In spite of the radical reforms it introduced however, the Federal Tribunal, which then only received a permanent and autonomous status, was not raised to a level of influence and dignity comparable to that of the American Supreme Court.

As a court of civil law, it was given powers of original jurisdiction in all cases of conflict arising between the Confederation and the cantons or between the cantons. It received the same power for cases in which the Confederation or a canton was being sued by a private person or in which a canton was suing a private person, when such cases involved a consideration of at least 4,000 francs.

Furthermore the Federal Tribunal has appellate jurisdiction over all civil cases involving a sum of at least 4,000 francs when they have been tried before a cantonal court of final appeal. This is the most important function of the Federal Tribunal, because, in the absence of all in-

ferior federal courts, the unity of civil jurisprudence could not otherwise be assured in Switzerland.

As a court of criminal justice, the Federal Tribunal, sitting with the assistance of a jury, was entrusted with the trial of treason, revolt and violence against the federal authority and of all cases of penal offenses against the law of nations.

As a court of public law, the Federal Tribunal was given original jurisdiction in all cases of conflict between the Confederation and the cantons or between the latter, as well as the power to deal with all complaints about the violation of the constitutional rights of the individual. An amendment to the Constitution of 1874, adopted in 1914, called for a federal court of administrative justice. The Federal Assembly, in 1925, decided that the duties of this court were to be exercised by the Federal Tribunal.

In its function as a court of public and administrative law, the Federal Tribunal must uphold the federal Constitution and federal statutes as against cantonal Constitutions and statutes. In trying cases of violation of individual rights, it must also uphold cantonal Constitutions as against cantonal laws or administrative acts. It has thus a limited right of judicial review.

However, it has been expressly and deliberately denied the right of deciding on the constitutionality of all federal statutes. The authors of the Constitution of 1874 reserved to the Federal Assembly alone the right of interpreting the Federal Constitution. This was the less surprising as the fundamental law drafted by the Federal Assembly, as we have seen, had attributed to it the exercise of the supreme authority of the Confederation.

The proposal to extend the powers of the Federal Tribunal in this respect, in accordance with the American

precedent, has however repeatedly been made by highly competent authority in Switzerland. It is doubtful whether the Swiss people would consent to such a change which, in their eyes, could not but involve a limitation of their own sovereignty. Since, thanks to the legislative referendum, a federal statute never comes into force without the tacit or express approval of the people, the refusal of a court to apply it on grounds of unconstitutionality would necessarily be held to challenge democracy itself.<sup>3</sup>

On the other hand the Federal Tribunal, even since its establishment in Lausanne in 1875 as an autonomous organ of the Federal Government, has never enjoyed the prestige and independence of the American Supreme Court. To endow it with the right of disavowing federal statutes would therefore be to impose on a much weaker court a much heavier burden than that under which the American judiciary sometimes seems to be staggering today.

The number of the judges of the Federal Tribunal, which had been fixed at nine after the adoption of the Constitution of 1874, has gradually been increased to twenty-four, as the jurisdiction of the court has been extended. These judges are elected for a term of six years by the Federal Assembly. Although their elections have come to be decisively influenced by political and regional considerations, it has always been customary to reelect the members of the Federal Tribunal as long as they live or care to serve.

The contrast between the Swiss and the American federal judiciaries is thus complete. In Switzerland, one Fed-

<sup>3</sup> Cf. on this subject the reports and debates of the Swiss Society of Jurists who discussed it in their annual meeting of 1934, *Verhandlungen des Schweizerischen Juristenvereins*, Erstes Heft, Basle, 1934.



eral Tribunal of twenty-four members usually sitting in three separate sections, without any inferior federal courts but with appellate jurisdiction over cases tried under federal law by the supreme courts of the cantons. In the United States, at the summit of a whole hierarchy of Circuit and District Courts, a Supreme Court with nine judges, that is almost three times less for a population more than thirty times greater. In Switzerland, judges elected for a relatively short period by the legislature. In the United States, judges nominated, and by and with the advice and consent of the Senate, appointed by the President to serve during good behavior. As the federal statutes have come to cover the whole fields of civil and commercial law in Switzerland, the extension of the jurisdiction of the Federal Tribunal is much greater than that of the American Supreme Court. But the former has, under the Constitution, been deliberately deprived of the right of invalidating any federal legislation on the grounds of unconstitutionality. The latter, on the other hand, derives its peculiar authority and influence from the exercise of this very right which, although not expressly provided for in the fundamental law of the Union, has been exercised for over a century and is generally looked upon as a fundamental characteristic not only of the American judiciary but of the whole American scheme of government.

## CHAPTER VI

### THE POLITICAL PARTIES

#### *1. The anatomy and the physiology of the state.*

In the preceding chapters we have outlined the evolution and sketched the organs of the Government of Switzerland. In other words, we have sought to give a summary idea of the history and character of the principal institutions by means of which the Swiss people administer their public affairs. If we conceived of government only as a static structure, our task would thus be accomplished.

But government is also a dynamic process. By government we understand not only the anatomy of the state, which is the special object of constitutional law, but also its physiology, as studied by the more ambitious science of politics. We must therefore pursue our investigations in order to ascertain how the Swiss people work their governmental institutions and what use they have made of their constitutional powers.

Switzerland is a democracy. Such, as we have seen, it was intended to be by the authors of its present Constitution, and such it has undeniably become and remained from 1848 until today. In Switzerland, as in all other democracies, the individual is the master of the state. But even in a liberal democracy the individual alone is inevitably impotent. In order to exercise his authority, he must join forces and combine with similarly minded fel-

low-individuals. When he does so, the result is a political party, which is thus a necessary tool of democratic government.

The Swiss Constitution, as that of the United States, contains no express mention of this tool without which it would manifestly be unworkable. Since the introduction of proportional representation for the election of the National Council, however, political parties are at least indirectly alluded to. The term of "proportionality," which is used in the amendment adopted in 1919, would be meaningless if it did not refer to the parties between whose elected representatives a proportion, similar to that prevailing between their electors, was to be established.

## 2. *The origin and evolution of parties.*

Long before the introduction of this amendment, however, the Swiss electorate was divided up into two distinct political groups. In fact it may be said that the Federal Constitution of 1848 owed its birth to the triumph of one of these groups over the other.

Until the cantonal revolutions of 1830, before which one could hardly speak of actual democracy in Switzerland, the opposition was between the governing classes, who wished to defend their political privileges, and the common people, whose leaders demanded the abolition of these privileges. As the latter were based on the same historical tradition as that according to which Switzerland was a very loose confederacy of sovereign cantons, and as they gave rise to similar complaints in all parts of the country, the conservatives wished to conserve and the progressives to remove, not only privileges within the cantons, but also barriers between them. Thus from the very outset of their evolution, the Swiss political parties present

a dual character, cantonal and federal, which they inherited from the dual nature of the country.

When, after the revolutions of 1830, the progressive party came into power in all the principal cantons, their leaders in the Federal Diet lost no time in pressing for a revision of the federal Constitution. As they represented a strong majority of the Swiss people, their national ambitions for a more perfect union were not uninfluenced by their desire to extend their domain to the strictly Catholic cantons, which, under the cover of their states' rights philosophy, had remained aloof.

The federal Constitution of 1848 was, as we have seen in our historical sketch, the expression of the political ideals of the progressive party. Representative democracy and national unity,—such were, from the beginnings of their action, the common goals of this party. Soon after 1830, however, a split became apparent in their ranks. For most of their leaders, especially in the towns, political equality and liberty were ends in themselves. Having overthrown their former masters, whose domination had been based on the negation of these ideals, these liberals, as they came to call themselves, were content to take their places. The rule of intelligence, ability and culture was simply to be substituted for that of privilege, of birth and of wealth. The rural masses, on the other hand, expected the triumph of equality and of liberty to endow them with more tangible benefits than those resulting from a mere change of masters.

To them equality meant, if not communism, at least an appreciable reduction of the economic inequalities between rich and poor. As for liberty, it conveyed to them suggestions of emancipation from taxation, rents and mortgages. The freedom of thought, of speech and of assembly had no

overpowering attractions for peasants who thought little, spoke less and harbored no desires to hold any other meetings than those to which they had always resorted in perfect liberty. These dissatisfied masses were, therefore, gradually formed into a so-called radical party.

Having coöperated with the liberals in overthrowing the régime of traditional privilege which prevailed before 1830 and while pursuing in the national field the same centralizing policies until and after 1848, they opposed their more conservative allies on two major issues. In economics, they were more favorable to state intervention as a means of mitigating the unequal results of competitive individualism. In politics, they were usually, although not consistently, more democratic. They favored direct as against indirect elections, short as against long terms of office, and soon also popular as opposed to representative legislative institutions. In their natural leaning towards direct democracy they were often inhibited, however, by the fact that, being in power, they not unnaturally deprecated all measures restrictive of their own influence. Furthermore they were, as a rule, more aggressively anti-clerical than their liberal allies.

In the Federal Assembly liberals and radicals formed a coalition which, in spite of occasional conflicts between individuals and groups, retained control of the legislature for half a century. Having imposed the Constitution of 1848 and later that of 1874 on an openly hostile Catholic minority, this coalition, in which the radicals gradually supplanted the liberals, was long supreme.

The parliamentary opposition to the liberal-radical coalition steadily grew in numbers as years went on. Immediately after 1848 it was represented in the National Council by less than ten Catholic conservatives out of a total of

one hundred and eleven members. After 1852, it was strengthened by the support of some Protestant conservatives from the canton of Berne. But until 1874 it never controlled more than a third of the members of the House. For nearly fifty years, all the seven members of the Federal Council were radicals or liberals, the former gradually outnumbering the latter. In 1891 the last liberal left the executive. Thereupon his place was taken by a representative of the Catholic conservative party. This important event both implied and accentuated a change which had gradually been coming about in the relations between radicals and conservatives. While retaining its complete independence and indeed sometimes opposing governmental measures, the Catholic party became more coöperative. Since 1919, when a second Catholic member was elected to the Federal Council, the radicals and conservatives have, as a rule, supported together the common governmental measures and have constantly voted for each other's candidates in all important elections.

This political reconciliation between the former arch enemies was due mainly to the emergence of new opposition parties. ✓

Of these, by far the most important was the social-democratic party. From late and modest beginnings—in 1890, only six of the hundred and forty members of the National Council were socialists—it rose so rapidly into prominence in the course of the present century, that it has come today to enlist nearly a third of the electorate in its ranks. The reasons both of the late birth and of the rapid growth of this party are extremely significant.

Throughout the nineteenth century, the various so-called socialist movements in Switzerland were promoted almost exclusively by foreign, mainly German exiled intellectuals

and immigrant laborers. This very circumstance long led the Swiss industrial working class to hold aloof. Although this class was developing steadily both in numbers and in corporate consciousness, it still remained in close contact with the peasant stock from which it sprang. As, furthermore, the radical party was pursuing more and more ambitious state socialistic policies, it was for several generations able to hold the loyalty of the Swiss laboring class. Finally, before the introduction in 1919 of proportional representation for the election of the National Council, the socialists, who were in no canton a majority, usually cast their vote for the left-wing radical candidates.

All these circumstances have changed during the last years. As large scale industry has increased, notably in the cities, the Swiss workman has become detached from the soil and has gradually been turned into a class-conscious urban proletarian. On the other hand the state socialistic policies, pursued by the Confederation as well as by the cantons and municipalities, have given rise to an ever increasing army of public officials and employees. The majority of the latter have gradually been attracted to the socialist party by offers of higher salaries and other material advantages. That party, being everywhere in the opposition, could with impunity hold out such offers, whereas the ruling radical party, being responsible for the public finances of the state, could not always display an equal generosity. This is again changing within the most recent past, since the socialists, having come into office in various cantons and cities, are discovering that promises are more easily made than fulfilled. Besides the industrial laborers and the Government employees, who constitute the main following of the socialist party, the latter is now

bidding for the support of the poorest among the heavily indebted small peasant class.

Here it is coming into competition with all the other parties except perhaps with the dwindling group of the former liberals. Not only are the radicals and the Catholic conservatives vying with each other in support of the farmer, but the latter, not content with the heavy protection and generous subsidies which he is already enjoying, has in several cantons set up a new agrarian party of his own. This party, which for the last twenty years has been electing about one sixth of the members of the National Council, has since 1929 a representative in the Federal Council. This fact, coupled with the economic depression under which the mortgaged peasants are naturally suffering more than elsewhere, as Switzerland has heretofore remained true to the gold standard, accounts for the recent rise of an opposition young peasant group.

The depression has given birth to still another opposition group, at the last, 1935, elections to the National Council. This group, which has called itself independent, was founded by a business man who owes his popularity solely to the fact that he has lowered the cost of living in several cantons by the organization and successful management of a scheme of retailing at wholesale prices. Although this group will probably disappear with the circumstances to which it owes its origin, its recent success at the polls was extremely significant.

The following table shows the relative importance of the above-mentioned parties, as measured by the returns of the elections to the National Council since the war:

As is shown in this table, the radical, socialist and Catholic conservative parties of Switzerland, together represent



<i>Year of elec- tion</i>	<i>Radi- cals</i>	<i>Social- ists</i>	<i>Catholic Conser- vatives</i>	<i>Peas- ant party</i>	<i>Inde- pen- dents</i>	<i>Liber- als</i>	<i>Young Peasants</i>	<i>Other groups</i>	<i>Total</i>
1919	58	41	41	31	..	9	..	9	189
1922	58	43	44	35	..	10	..	8	198
1925	59	49	42	31	..	7	..	10	198
1928	58	50	46	31	..	6	..	7	198
1931	52	49	44	30	..	6	..	6	187
1935	48	50	42	21	7	6	4	9	187

about 75 per cent of the total electorate. A comparative analysis of the most recent programs of these three parties clearly reveals their fundamental tendencies.<sup>1</sup>

### *3. The present party programs.*

The radical party, which has made political Switzerland what it is today, is still fully imbued with its historical traditions. Today, as in 1848 and 1874, it stands for the complete emancipation of the individual from all the guiding and restraining influences of the Church and of all other paternalistic agencies. Today, as in 1848 and 1874, it stands also for a strong and democratic Confederation, able if need be to impose its progressive will on recalcitrant cantons. However, as its present program clearly shows, its individualistic liberalism has, in the course of the generations, come into conflict with its social tendencies. Thus, while still stressing the fundamental rights of the individual, it more than ever emphasizes today the need of state intervention both for the protection of society against all the evils and abuses of industrialism and for the promotion of all economic activities.

<sup>1</sup> See in the documentary annexes the present programs of the three principal Swiss political parties.

The Catholic conservative party, on the other hand, is neither individualistic nor liberal, but frankly theocratic. Its program shows that, while its leaders refrain from the thankless endeavor to denounce democracy before a democratic electorate, they neither flatter the individual nor extol the state he has created. Their appeal is to Christian charity in all social and political relations.

While vindicating the right of private property as being willed by God, they are as anti-capitalistic as they are anti-socialistic. As they rely for the salvation of the body politic neither on an enlightened and emancipated individual, nor on a mighty state, and as they are opposed to a strong Confederation for the very reasons for which the radicals advocate it, they are led to insist on the social virtues of the family and of the organized profession as bulwarks against the dangers of modern civilization. Thus, not uninfluenced by memories of the mediaeval guild system and by the ideals of corporatism as preached and practiced in neighboring dictatorships, they have come to recommend institutions of Christian coöperation between labor and capital. While not openly advocating any limitation of the political freedom of the individual, they do not expressly repudiate any of the authoritarian methods through which such institutions have elsewhere been created.

The program of the socialist party is a curious combination of political liberalism, marxian economics and ambitious planning in the fields of the production and distribution of wealth. While all political platforms must be examined in the light not only of their underlying philosophies and of their historical antecedents, but also of their electoral possibilities, this is particularly true of the Swiss socialist program.

Historically, Swiss socialism is a branch of the socialist international and as such a member of the spiritual family of Karl Marx, committed to his economic materialism, to his class-struggle doctrines and to his denial of private ownership of the means of production. Geographically, it is the labor party of a democratic country, in which the evils of the urban factory system as described in "The Capital" after British models, have never even been approximated and in which the numerical preponderance and increasing misery of the industrial proletariat, as announced in the classical gospel of socialism, have never been realized. Politically, it is today the strongest although not the preponderant party in the Swiss Federal Parliament.

In order to come into power, it would either have, through violence, to set up the dictatorship of a minority, or, through the increase of its membership, legally to achieve a majority at the polls. As the former method, although not contrary to the philosophy of marxism nor to the soviet precedent, is distinctly repugnant even to the socialist fraction of the Swiss people, there remains only the latter. But, in order to secure a majority at the polls, the socialists must gain the support of an adequate number of peasants and other petty *bourgeois*. As it will be manifestly impossible to convince these rural and urban property owners of the absolute truth and wisdom of the orthodox socialist doctrine, the Swiss socialist party has thrown them to the winds or rather presented them in a disguised form. Unable to win over the majority to its original program, it has sought to adapt its program to the views of the majority.

Its aim is the creation of a democratic, anti-fascistic and anti-capitalistic labor front. While not discarding its own ideals, it proposes to realize them by the introduction of a

vast system of planned economy rather than by the direct expropriation of all the means of production. On the other hand its former international and anti-militaristic tendencies have given way to a strictly national policy. The necessity of protecting Swiss political freedom against the possible assaults of foreign fascism has reconciled it with the national army. And the exigencies of economic planning have led it to advocate a strict limitation of foreign trade by means of protective tariffs and other restrictive measures.

As a method of catching votes in a period of acute depression, the recent Swiss socialist platform, which was obviously modelled on a Belgian pattern, may appear alluring. The last electoral results in 1935 show, however, that it has not yet seduced the majority of the Swiss people and that it thus, for the present at least, has failed even of this, its main purpose. As a program of government, it cannot but strike the impartial observer as shockingly demagogical, distressingly bureaucratic and bafflingly Utopian.

A characteristic common to these three as well as to the other minor Swiss parties, is the predominance of the economic and social over the political in their electoral programs. This is due both to the fact that the Swiss people are on the whole satisfied with the structure of their state and to the grave and prolonged crisis from which they have been suffering for the last years.

#### *4. Federal and cantonal parties.*

We have thus sought to describe the origins and general significance of the main political parties in Switzerland as concisely and as clearly as the complexity of the subject permits. Our description would be entirely misleading,

however, if the reader were to forget the basic character of the country. Political life in Switzerland was ever and is still, in spite of the centralizing tendencies which have prevailed ever since 1848, a cantonal much more than a federal phenomenon. Therefore the parties, whose importance we have measured by their success at the elections of the National Council, are essentially cantonal, and not federal, organizations. This is so for several distinct reasons.

In the first place, the average Swiss citizen believes, doubtless with more instinctive sincerity than reason, that his destiny is more affected for good or for evil by local than by federal policies. Consequently he joins a party or at least votes for its candidates on local much more than on national grounds.

Secondly, this party, which is formed mainly on local issues and which is supported exclusively by local subscriptions, is primarily concerned with local elections and local politics. Even the elections to the federal legislature are essentially local affairs, as the constituencies coincide with the cantons and as it is very rare for a candidate to run for federal office outside his own canton.

Thirdly—and this is the major contrast between Swiss and American politics—there are no nation-wide elections in which all the citizens of the country are urged to vote for or against the same candidate to a national office and on which they are thus called upon to choose the Government of the day and thereby to allocate the patronage which goes with such choice. The initiative and the referendum are no substitute for such elections. Not only are they not always party struggles, but also and especially legislative measures can never have on those who vote for or against them, the same crystallizing effects as the per-

sonal loyalties and animosities aroused in the election of the heads of rival party administrations.

Of the United States, Bryce wrote that "national parties have engulfed the state parties."<sup>2</sup> In Switzerland, on the other hand, the national parties owe their very existence, in so far as they enjoy a true existence, to the preëxisting and completely dominating cantonal parties. Far from being engulfed by the former, the latter are hardly influenced by them. In fact it could not unreasonably be claimed that, with the possible exception of the socialist party, there were no autonomous national parties in Switzerland, but only alliances for federal purposes of otherwise completely independent cantonal organizations. In support of such a view the fact could be adduced that in several cases the federal party allegiance of a member of the Federal Assembly is determined by himself after and not before his election and that his choice is noted without much interest by his electors. It could further be pointed out that, for several decades after 1848, there were no federal party organizations in existence. It was only in 1878 that the radical members of the federal legislature formed a parliamentary group. In 1881 the Catholic members followed suit by founding a so-called "conservative union." It was not until 1893 that the liberal democrats, known as the center party since about 1870, also constituted themselves into a national group.

The gradual shifting of authority from the cantons to the Confederation, which has characterized the evolution of Switzerland during the last century, has somewhat modified this state of affairs. Today, with very rare exceptions, all members of the Federal Assembly belong to one or another of the national parliamentary groups.

<sup>2</sup> Bryce, *op. cit.*, Vol. I, p. 566.

These have more and more come to call themselves parties, to hold periodic meetings, to elect officers and to adopt national programs. But even today, these programs are not true platforms in the American sense of the term. Candidates running for the federal legislature base their claims to popular favor much less on the principles enunciated in the federal programs of the party to which they adhere, than on their personal record and on their cantonal associations.

A complete study of party politics in Switzerland would therefore have to be based on a series of cantonal monographs. These would reveal a great diversity both of principle and of practice in cantonal parties bearing the same name and belonging to the same national groups. They would explain why Swiss citizens often change their party affiliations when moving from one canton to another. A radical of Zurich, for instance, where there is no Protestant conservative party, would, on settling in Geneva, be as apt as not to join the local liberals, rather than the local radicals.

As such an exhaustive analysis of a very complex situation would be impossible here, we have been content to present a synthetic view of party politics in Switzerland. We hope that it may help to explain the general trend of legislation which will be examined in the final chapters.

## CHAPTER VII

### THE DOMESTIC POLICIES

#### *1. The four dominating tendencies.*

In its broadest sense, government is a factory for the production of political goods. Of this factory, the institutions represent the technical equipment and the buildings in which it is housed; the political parties, the sources of energy which supply the motive power; and the legislative output, the commodities manufactured.

Most students of government limit their attention to the architecture of the factory and the design of its machinery. Some extend their investigations to the actual operations of this machinery. Few are concerned with the constructive results of these operations. The cause of this strange reticence cannot be indifference. Surely, in the political as in the industrial field, the finished products are more important for human welfare and therefore more interesting for the student than either the factory itself or the manufacturing processes. The reluctance of most authors to include an analysis of the legislative output in their treatises on government is clearly due to the magnitude and difficulty of the task.

While fully conscious of the impossibility of presenting any but a very inadequate picture of the policies pursued by the Swiss people, as the builders and operators of the factory we have described in the preceding chapters, we



feel that without it this brief study would be all too sadly incomplete. It is therefore to a summary consideration of these policies, which may conveniently be divided into domestic and foreign, that these last two chapters will be devoted.

The domestic policies of the Swiss people, which we will seek to define first, are naturally implemented and therefore expressed by the laws enacted by the Federal Assembly. Ever since 1874, the Swiss Government has published every year, in the three national languages, a special volume containing the annual parliamentary output.<sup>1</sup> The mere table of contents of these sixty-two volumes covers much more space than we can devote to a description of the policies laid down therein. Instead of attempting the impossible task of analyzing even only the most important legislative measures enacted in the course of the last generations, we shall seek synthetically to discern the principal tendencies which they reveal.

These tendencies may be considered, according to the aims pursued, under the following headings: first, freedom, or the emancipation of the individual; secondly, democracy, or the subordination of the state to the will of the individual; thirdly, centralization, or the consolidation of the federal state; and fourthly, the continuous extension of the activities of this state in the economic and social service of the individual and the corresponding growth of its powers over him. Finally we shall seek to illustrate these various tendencies and particularly the last mentioned by presenting a brief sketch of the budgetary evolution of the Confederation.

As we have seen above, the liberal-radical founders of

<sup>1</sup> Under the title of *Recueil officiel des lois et ordonnances de la Confédération suisse*.

modern Switzerland were animated by the desire to emancipate the individual from the shackles of the aristocratic, mercantilistic and clerical traditions which had for centuries limited his freedom. Thanks to their efforts, this purpose had been almost fully achieved when the Constitution of 1874 came into force. All political privileges had been done away with. The freedom of petition, of belief, of speech, of the press, of coalition and of establishment had been guaranteed. Economic liberty was complete. It was more complete than it had ever been in the past, since all the former restrictions had been abolished and also more complete than it is today, since the state socialistic evolution of the last half-century had not yet set in. The anti-clericalism which characterized the Constitution of 1874 was also intended by its advocates to contribute to the emancipation of the individual.

A marriage law of 1875, enacted in execution of its provisions, firmly established the principle that religious considerations could in no case constitute an obstacle to the exercise of any legitimate right of the private citizen. The last important constructive steps calculated still further to emancipate the individual were the granting of annual federal subsidies to the cantonal primary public schools in 1902 and the establishment in 1914 and 1928 of a federal administrative jurisdiction.

Since then the desire to protect the individual has on the whole proved stronger in Swiss politics than the will to emancipate him. He has thus been protected against industrial exploitation by labor legislation in 1877, 1908 and 1920, against epidemics and other dangers to his health by various sanitary measures in 1897, 1905 and 1913, as well as against himself by the sundry forms of temperance and anti-alcoholic legislation in 1885, 1908 and 1930 and by an

anti-gambling measure in 1920. As protection by the state almost always takes the form of prohibitions, the freedom of the individual was in all these instances deliberately sacrificed to his welfare.

However the Swiss people have never failed to show their legislators that their love of personal liberty was not dead, by consistently rejecting at the polls even the most reasonable police measures. In 1884, 1896, 1903, 1922, 1923, 1929 and as recently as 1934, referenda on bills intended to protect the community at the expense of the freedom of the individual have given rise to unmistakable explosions of popular ill-will.

As in the case of the emancipation of the individual from the state, so in that of his control over the state, all essential victories had been won in Switzerland in 1848 and in 1874. Since then only the introduction of the constitutional initiative in 1891, of proportional representation for the election of the National Council in 1919, and of the optional referendum on international treaties in 1921, can be adduced to prove that the democratic purpose of the people which had created the present Swiss commonwealth in the middle of the nineteenth century is still intact.

This is so in spite of certain contrary appearances. At the outbreak of the World War, the Federal Assembly, with the tacit but certain approval of the whole nation, granted the Federal Council exceptional and almost dictatorial powers. From 1914 to 1918, these powers were firmly used but periodically and freely subjected to parliamentary discussion. Since the end of the war, the democratic Constitution, which had undoubtedly undergone a temporary eclipse, has been reestablished. However, both the federal

executive and the federal legislature have been led to retain and alone to exercise rights which they formerly shared with the people. This has been due not to any authoritarian impulses on their part, but solely to the greatly enhanced complexity of the activities of the state. When the Government is obliged continuously to distribute subsidies, to make and renew commercial agreements and clearing arrangements, to grant, to reduce and to increase import quotas, and to take the countless other sudden and often very far-reaching decisions which the present economic condition of the country and of the world calls for, it cannot observe the rules of the democratic game as strictly as in more normal and less hectic times. The Swiss people are as alive to these necessities as their authorities. But the latter would no more attempt, than the former tolerate, dictatorship in any form. Not only have the elections and the press remained entirely free, but the Government and the legislature are sedulously careful not to disguise their acts nor to offend the public will.

The forms of democracy have undoubtedly undergone a change under the impact of irresistible economic influences, but its spirit has remained the same. Indeed, the Swiss Government is so sensitive and so obedient to popular favor, that it can more justly be accused of insufficient leadership than of excessive independence.

The third dominant tendency of recent Swiss politics has been administrative and political centralization. The Swiss Constitution of 1848 was clearly a compromise effected by means of mutual concessions by those who favored the maintenance of sovereign or quasi-sovereign cantons, and those who wished to create a strong federal state. Since its adoption, the powers of the Confederation have step

by step been extended and those of the cantons reduced. The motive forces behind this evolution have been partly political, partly economic, partly social and partly financial.

The centralizing tendencies have as a rule, although not quite consistently, been promoted for political reasons by the majority of the people, particularly in the more important Protestant cantons of German Switzerland. Patriotic considerations, supported by the example of the unification of the neighboring German Empire, led them to demand the reinforcement of the federal bond and the concentration of all the energies of the nation in the federal state. Thus the army which, after 1848, was still composed mainly of cantonal contingents, equipped and trained by the cantons, under a loose federal supervision, and commanded by officers appointed by the cantonal Governments, has been by degrees in 1874, 1907 and 1935 placed under ever more immediate and effective federal control.

The same popular majority led by the Protestant German Swiss cantons has persistently striven for the legal unification of the country and thereby for the extension of their own influence over the linguistic and religious minorities. In this effort they have usually been supported by the Swiss Bar Association and by prominent individual lawyers from all the most important cities. The federal Constitution as adopted in 1874 authorized the Confederation to enact uniform legislation concerning marriage, civil capacity, commercial matters including contracts, literary and artistic property and bankruptcy. These provisions were extended to include the whole domain of civil and criminal law, in 1908. As a consequence of these constitutional authorizations, the Federal Assembly proceeded to enact federal laws on marriage in 1874, on trade marks in 1877, on civil capacity and on contracts in 1881, and on

bankruptcy in 1889. In 1907, it elaborated a complete civil code. Since January 1st, 1912, when this code came into force with the revised federal law on contracts, the Swiss people have thus, for the first time in their history, been governed by one and the same system of laws in all the most important relations of their daily life.

By this gradual and continuous process of legal unification, they have more and more clearly asserted the unity of their national will. The process, however, is not yet complete. Having been retarded by the diversity of fundamental conceptions and sympathies, revealed during the World War, and by an instinctive reaction against what is sometimes resented as oppressive federal bureaucracy, it may not be completed for years to come. The opposition of views among the different linguistic regions and religious confessions of the country has for instance so far proved an insuperable obstacle to the unification of the criminal law.

However, the political will to unify has in most essentials prevailed over the fidelity to local habits.

This political will has found a powerful ally in the progress of industrial and commercial technique and in the necessities of economic evolution to which this progress has given rise.

Thus, when the telegraph was introduced in 1851 and the telephone in 1878, the Confederation organized them as branches of the federal administration, although the Constitution contained no specific provision on the subject.

Far more important as a centralizing factor were the railroads. After memorable debates in the Federal Assembly in 1852, it was decided, against the will of the Federal Council and of an important radical minority, that the federal state should assume no immediate financial and

administrative responsibility for their construction and operation. Consequently all the first lines were built by private companies under cantonal charters. However the intervention of the Confederation soon became inevitable. When, a decade later, it was planned to construct an international line through the Gothard, Germany and Italy, without whose financial coöperation the project could not have been carried out, made their grants conditional upon the assumption by the Federal Government of strict supervisory duties. In 1872, a law was passed transferring the right to grant railroad concessions from the cantons to the Confederation. In 1879, federal funds had to be voted in order to allow for the completion of the Gothard tunnel. In 1898, after several partial and unsuccessful attempts, the Federal Assembly and the people at the polls voted the nationalization of all the main lines of the Swiss railroad system. Today, nearly half of the sixty-three thousand persons in the employ of the Confederation are railroad employees and more than three fifths of the federal debt has been incurred on behalf of the state railroads.

Several other examples of the centralizing influence of the application of scientific discoveries to economic life can be quoted. Thus, in 1887 and 1905, the legislative powers of the Confederation were extended first to, and then in, the field of industrial patents. In 1897 and 1908, as a result of the recent progress of hydroelectricity, the hydraulic resources of the country were placed under its control. The right to regulate internal navigation, motor and cycle traffic and aviation was transferred from the canton to the federal state in 1919 and 1921.

The improvement of banking technique had similar political consequences. The Constitution of 1874 empowered the Confederation to regulate the issue and redemption

of banknotes, but expressly denied it the right of interfering with the privileges of private and cantonal banks of issue. In 1876, the people rejected the bill which the Federal Assembly had drafted to supplement these provisions. A revised bill was finally adapted for the purpose, in 1881, after the people had, a year before, refused to grant the Confederation the sole right of note issue. But, with the increasing use of fiduciary currency, the disadvantages of an anarchical system of regional note issues finally overcame the popular prejudices, which had long been hostile both to monopoly and to centralization in this matter. In 1891, a constitutional amendment was adopted similar to that which had been rejected eleven years before. Thus the foundations of a central bank were laid. But when, in 1897, Parliament passed a bill providing for the establishment of such a bank by the Confederation, it was again rejected at the polls. It was only in 1907, after the people had, two years before, tacitly approved a federal postal check law, that the Swiss National Bank was born.

In all these cases, the causal relation between technical progress and administrative centralization was indirect, but none the less obvious. Technical progress engendered changed economic conditions, which in turn called for state intervention. As state intervention almost necessarily meant federal intervention, the final result was centralization.

A similar concatenation of circumstances can be observed in the social field. Here technical progress gave rise to industrial concentration and thereby to all the evils and dangers of the factory system. These evils and dangers—social insecurity and industrial overwork under unsanitary conditions—in turn called for state intervention. Again



state intervention almost inevitably, by reason of the competition prevailing between the cantons, meant federal intervention.

Thus federal labor legislation was first made possible by constitutional amendments and then enacted by Parliament. That this legislation was the product of technical factors and of the resulting social pressure and not of any spontaneous humanitarianism on the part of the Swiss people, is certain. It is clearly shown by the circumstances—familiar to all students of the subject—that the electorate was usually persuaded into approving the proposed measures only after it had once or twice previously rejected them.

The Constitution of 1874 had authorized the Confederation to enact uniform rules for the regulation of child labor, the limitation of the hours of work of adults and the protection of laborers in insalubrious and dangerous occupations in factories. An act to this effect was adopted in 1877 and has several times been revised since.

A constitutional amendment to grant the Confederation the right uniformly to regulate all other industrial relations in factories and in smaller establishments was proposed by the Government in 1892, adopted by the legislature in the following year, but rejected by the people in 1894. The proposal was renewed in 1905 and finally approved by the people three years later.

In 1890, the Confederation was authorized to legislate in the field of accident and sickness insurance. After refusing a first bill relating to the subject in 1900, the people expressly accepted another, although a referendum against it had again been launched.

In 1925, the powers of the federal state were again extended to cover the field of old-age and widows pen-

sions and invalidity insurance. But the people, who had six months earlier rejected the more drastic constitutional amendment, in 1931 again rejected as too costly and too bureaucratic a very ambitious bill which the Government had drafted on the subject and which the legislature had accepted.

To these constantly extended powers of the Confederation in the sphere of social legislation in the narrow sense of the term, must be added those relating to the health and moral welfare of the individual, to which we have already referred above.

Besides the political, economic and social factors which have promoted centralization in Switzerland during the last century, the factor of public finance must also be mentioned.

When the present Confederation was founded in 1848, it naturally was and was expected to remain poor, whereas the cantons were for the most part in a position of relative affluence. This real and anticipated disproportion was such that the authors of the Constitution included cantonal contributions among the sources of ordinary federal revenue. The provisions to this effect, which have survived as article 42, letter f, of the present fundamental law, have never been put into effect.

The pessimism with which the financial future of the Confederation was considered in 1848 was not justified. The import duties, which were long its only substantial and are to this day its main source of revenue, early proved sufficient to meet its needs. The gradual growth of imports long kept pace with the gradual growth of federal expenditure. The adoption of the Constitution of 1874, which appreciably increased this expenditure, but little preceded the conversion of Switzerland to protectionism

which, in turn, led to a corresponding rise in the financial yield of the customs. Thus, while the cantons, relying mainly on direct taxation for their budgetary equilibrium, came to be less and less prosperous, the Confederation, whose revenue increased by leaps and bounds as a result both of rising tariffs and growing imports, became more and more so.

Already in 1894, a constitutional amendment had been proposed by popular initiative, providing that, out of the federal customs receipts, 2 francs per head of the population should annually be paid over to the cantons. The initiative, although generally backed by the States' Rights Party, failed to win a popular majority. However it showed how, in the course of less than half a century, the relative position of the Confederation and of the constituent cantons had been modified. About at the same time, the practice developed of regular federal grants to the cantons for specific, and mainly for agricultural, purposes. By 1913, these grants had come to absorb nearly 25 per cent of the federal revenue.

When, during the World War, imports and with them customs revenue declined, the Confederation was obliged to resort to direct taxes and to stamp duties. As this implied trespassing on what had previously been held to be the financial reserves of the cantons, it offered to share with them the yield of the new revenue. To the former subventions were thus added so-called legal participations. Today, the subventions and participations annually paid by the Confederation to the cantons represent well over a hundred millions, that is a sum which the latter could under no circumstances afford to forego.

The cantons, of whom it had, in 1848, been expected that they would normally be and remain the tutors and

benefactors of the Confederation, have today become public charges on the federal revenue. That this financial dependence cannot but be exclusive of a true moral and political independence is obvious.

Thus political, economic, social and financial circumstances have all contributed to the centralization in which we have recognized the third ruling tendency of recent Swiss political evolution.

The fourth and last tendency is even more striking. It is the gradual extension of state activities and of state intervention into fields which were formerly, and particularly in the liberal era of the middle of the nineteenth century, held to be outside the bounds of its legitimate domain. The individual, having, with the triumph of democracy, become the master of the state, proceeded to impose ever more onerous duties and ever heavier burdens upon his newly won servant. He apparently did not realize that by so enslaving it, he was making it ever more indispensable to his own well-being and thereby condemning himself to a new bondage not less oppressive than that from which he had emancipated himself a century before.

In 1848, in Switzerland, liberalism was not only the prevailing political doctrine, but also the dominant social and economic creed. To illustrate the intellectual temper of the ruling circles and the rigidity of their liberal orthodoxy, one example may suffice. When, in 1848, the Federal Council drafted the first federal tariff bill, it expressly repudiated all forms of protectionism as offending not only against sound economic principles, but also against the fundamental moral and political principle of equality before the law. In the accompanying message of the Federal Council to the Federal Assembly we read:

"One cannot exceptionally grant to some branches of industry a greater measure of protection than to others, because the federal Constitution, in its letter and in its spirit, proclaims the equality of all citizens before the law and suppresses all privileges." Thus it was held that to protect one class at the expense of the others was to display unjustifiable favoritism.

Against this orthodoxy, however, the masses and their more demagogic leaders were not slow to revolt. Thus, in 1849, Staempfli, a member of the Executive Council of the canton of Berne and later President of the Confederation, declared in a speech:

"The stomach cannot be content with liberty and equality. Man does not live of freedom and of the freedom of the press. One must satisfy his material needs. That is the question with which the latter half of the century will have to deal."<sup>2</sup>

Already prior to 1848, the cantons had begun to extend their activities, particularly in the educational and economic spheres. For the strict economy which had characterized the financial administration of the former paternalistic Governments, were substituted habits of lavish expenditure. Not only did the reins of government frequently pass into hands less used to dealing with large funds, but the very principles of the new régime seemed to command public generosity. Having taken possession of the state, the individual felt authorized and indeed called upon to make the most of the opportunity.

The Confederation, whose authorities were not at first as close to the masses of the people as the cantonal Governments, was not immediately affected by this new philosophy. After the adoption of the revised Constitution of

<sup>2</sup> Weiss, Theodor, *Jakob Staempfli*, Vol. I, Berne, 1921, p. 265.

1874, however, and especially since the early eighties, it little by little took the place of the pure liberalism of the older generation.

We have already observed how technical progress almost automatically determined state intervention, by the economic and social changes which it brought about. But technical progress alone could not explain the new political outlook of the people. It was the logic of democracy which led them to increase their demands on a state in which they came to see their servant, after having for centuries obeyed it as their master. As long as the state had been controlled by a privileged group, the less it interfered with their daily life, the better. That is why, in fact, the early revolutionaries were liberals as well as democrats. But, now that the democratic revolution had subjected the state to their rule, they decreed that it was to contribute to their material welfare and not only to their moral improvement. While still entrusted with the maintenance of public security, peace and order and with the administration of justice, it was now called upon first of all to relieve poverty, to encourage production and to create prosperity.

That is how and why the Swiss people came to inaugurate and to pursue with ever increasing vigor, commercial policies of protection, agricultural policies of financial subsidies and regulated prices, social policies of unemployment relief and compulsory insurance, and railroad, banking and insurance policies of state ownership and management.

During the World War, Switzerland being surrounded and blockaded on all sides by belligerent powers, every import and every export gave rise to diplomatic negotiations and almost every act of production and consumption to the issue of Government licenses. The state having ab-

sorbed many and controlled almost all the normal economic activities of the individual, was everywhere. With the return of peace, the principal restrictions and regulations were of course abolished or at least loosened up. But much remained in the public mind of the conception of an omnipotent state, responsible for the fate of all its citizens.

Today, under the pressure of the world economic crisis, conditions resembling those of the war have returned. The necessity of combating and relieving unemployment, of protecting the labor market and of defending the gold standard have led to the distribution of state funds, to the subsidizing of industries and of the tourist traffic, to the organization of public works, to the strict control of all labor immigration, to the fixing of import quotas, to the negotiation of clearing agreements and to countless other governmental measures. Most of these, to be sure, have not been freely willed by the Swiss people, but have been imposed on a reluctant nation by external circumstances. However, it cannot be said that they are out of harmony with the general policy of state intervention, which had previously been pursued for more than a generation.

This policy, which may or may not be called socialistic, has certainly not been inspired by the socialist party. It was on the contrary often influenced by the desire to combat that party by taking the wind out of its electoral sails. Whenever the socialists have resorted to a constitutional initiative on their own behalf, they have been decisively defeated at the polls. Thus in 1894, on a "right to work" proposal, in 1918 on a proposal to introduce a permanent direct federal tax, in 1922 on a proposal to raise a capital levy, in 1923 on a proposal to curtail the powers of the

Federal Council in a matter of customs tariffs, and in 1935 on a proposal to establish a complete system of planned economy.

Although all these revolutionary onslaughts were regularly repulsed by the majority of the electorate, it cannot be denied that the conservative victories were, as a rule, won by means of significant concessions made to the program of the vanquished. In Switzerland, perhaps even more than in most other capitalistic countries, it is therefore not individualism that has triumphed over socialism in the course of the last generation, but a form of state socialism, or "étatisme" as it is usually called, whose policies are hardly more liberal than those of its revolutionary counterpart.

How much further this economic anti-liberalism can be carried without seriously threatening the political liberalism to which the Swiss people are still firmly attached, is the great problem of the future. That it cannot be carried much further, nor even maintained in its present status without completely ruining the credit of the state, should be obvious to every impartial student of the recent budgetary evolution of the country.

## *2. The evolution of the federal budget.*

The following statistical table is presented with a view to illustrating the financial repercussions of the last two political tendencies which we have just discussed. It relates to the revenue, expenditure and public debt of the Swiss Confederation from its foundations in 1848 until the present day.

In order correctly to interpret these figures as a commentary on the recent political evolution of Switzerland,



ORDINARY ANNUAL RECEIPTS AND EXPENDITURE AND TOTAL  
PUBLIC DEBT OF THE SWISS CONFEDERATION

(in 000,000's of Swiss francs)

<i>Years</i>	<i>Ordinary Receipts</i>	<i>Ordinary expenditure</i>	<i>Total public dept</i>
1850	4.7	4.6	3.9
1860	8.4	8.6	4.7
1870	9.2	18.2	21.3
1880	23.1	21.7	36.8
1890	39.1	38.2	70.7
1900	58.5	60.2	77.7
1910	96.4	90.1	1604.3
1913	100.5	105.8	1674.8
1919	149.8	245.5	3752.7
1920	177.4	276.9	4208.7
1925	299.0	308.0	4848.4
1930	433.1	426.4	5073.4
1931	428.4	426.1	5035.2
1932	419.9	444.1	5068.9
1933	409.8	482.1	5215.2
1934	453.8	480.2	5340.1
1935	485.4	504.0	.....

the eighty-five years to which they relate may conveniently be divided into four periods of very unequal length.

During the first period—the latter half of the nineteenth century—the Swiss Confederation appears as a lightly taxed and cheaply governed state, enjoying the benefits of a well-balanced budget and saddled with an almost negligible debt. As the population of the country was slightly over 3,300,000 at the end of the last century, the federal debt represented only about 25 francs per head. Both the revenue and expenditure, to be sure, as well as the debt, had constantly been increasing during this period. This was particularly the case since the coming into force of the more highly centralized Constitution of 1874 and of the inauguration of the more ambitious state policies in

the eighties. Still, not only the annual figures, but also their rate of increase, remained well within easily manageable proportions.

During the second period, which embraces the first decade of the twentieth century and the last three pre-war years, the budgetary equilibrium was maintained thanks to the rapidly rising yield of the customs revenue, but the public expenditure began to grow at a rate which was already deemed disturbing by independent observers. As for the public debt, it had suddenly jumped from less than one hundred million francs to over a billion and a half. This was the result of the first and most important experiment in Swiss state socialism, namely the nationalization of the railroads in 1902. Huge as this debt appeared in comparison with the previous public burdens, it alarmed no one. As the productive assets which it represented were held to be of equal value and fully able to pay the interest on the invested capital, it was not realized that it might some day seriously jeopardize the credit of its federal guarantor.

The war years of 1914 to 1918—our third period—were of course abnormal in every respect. Although Switzerland succeeded in maintaining her neutrality, her army remained completely or partly mobilized for over fifty months. This alone cost the Confederation over a billion francs. Moreover the necessity of revictualling the country under conditions of state import monopolies involved the Federal Government in further very heavy expenditure. Its embarrassment was increased also by the semi-paralysis of the federal railroads and by the falling off of the customs revenue due to the reduced state of international trade.

To meet these difficulties, temporary direct federal taxes

on capital and income were levied, a federal war profits tax was introduced, internal and external loans were floated and the note circulation of the National Bank was increased. The immediate financial result was a more than doubled federal debt and a completely unbalanced budget.

More far-reaching, however, even in its financial consequences, was the totally altered political outlook of the Government and of the people which resulted from the experiences of the war. Before 1914 and in spite of the rapidly swelling budgets, the aim of all successive finance ministers had always been to keep public expenditure within bounds and to avoid unproductive indebtedness. In the pursuit of this aim, they had invariably enjoyed the support of parliamentary majorities and of public opinion. Before 1914, also, and in spite of increasing state intervention, no one had held the Confederation responsible for the solvency of each economic undertaking nor for the well-being of each individual citizen.

Now all this was changed. War finance had apparently accomplished miracles. It had certainly belied all previous calculations and made possible public expenditure on a scale formerly undreamed of. Since all conservative authorities had been mistaken in the past, why should one heed their warnings about the future and their advice on the necessity of retrenchment? Moreover, since under the stress of war conditions, it had been deemed legitimate and found necessary to subject all private enterprise to public control and to endow the state with unlimited powers of intervention in all fields of economic activity, why should it be less legitimate when it became less necessary? Since it had been necessary and possible under more difficult circumstances, might it not at least be useful and profitable in less troubled times?

Such questions were perhaps not often expressly formulated, but the instinctive feelings which suggested them were those of a large part of the Swiss people. The farmers, who had been used to the abnormally high prices prevailing under what were practically starvation conditions, looked to the state that had regulated these prices during the war to maintain them after the return of peace. The laboring masses, who had during the war experienced alternative periods of unemployment and of over-work, both of which had brought them into direct contact with federal agencies, demanded that the state should show no less solicitude for their welfare during the industrial depression which developed shortly after. The consumers, who had known bread and milk and butter and meat and sugar cards during the war, were inclined to hold the state equally responsible for their sustenance after the suppression of these devices. And, especially, the Government officials, who had exercised exceptional powers and enjoyed supreme authority as members of the war administration, were extremely reluctant to revert to their meagerly paid and moderately esteemed jobs as peace-time servants of the public.

The financial statistics relating to the years since the war—the last of our four periods—faithfully reflect these psychological conditions. Far from falling back to its pre-war level, public expenditure continued incessantly to rise. Indeed it rose to such an extent that it is today nearly twice what it was in 1919 and nearly five times what it was in 1913, notwithstanding the fact that the price index is today as 126 is to 100 in 1914 and to 222 in 1919. The revenue also has been increased in almost the same proportion, although the taxable matter is certainly not as valuable as it was in 1913, when the tax yield was more than

four times less. As for the federal public debt, in spite of the tremendous fiscal burden which has been shouldered by the people, it has reached the astronomical figure of over 5,300,000,000 francs. Compared to what it was in 1900, it is as 6,846 to 100. Compared to what it was in 1913, on the eve of the war, it is as 319 to 100. Compared to what it was in 1919, on the morrow of the war, when according to all reasonable standards, heavy funding operations should have set in, it is today as 142 is to 100.

This prodigious increase in the expenditure and in the public debt of the Confederation is of course due neither to a corresponding rise in population, nor still less to a corresponding increase in the national wealth. It is due in an appreciable measure to the progress of centralization. However, as an almost equivalent rise in the expenditure and public debt of the cantons shows, it is due mainly to the more and more general acceptance and practice of a political philosophy in which the individual is sacrificed to the state which he instituted to serve him.

According to the professed intentions of its leading advocates, this political philosophy is calculated to improve the lot of the average man, even if at the expense of the wealthy. As a matter of fact, however, if it has undoubtedly achieved its incidental result in making the rich poorer, it has lamentably failed in its primary purpose of making the poor richer. At the same time it has certainly limited the freedom of rich and poor alike to such a degree that the Swiss people will soon have to choose between the political liberalism, to which they are still passionately attached, and the economic socialism, in which they have been indulging with ever less restraint for the last sixty years and particularly since the war.

To a very large degree, the domestic policies of the

Swiss people resemble those practiced in all the great countries of Western civilization since the advent of democracy. In some of these, as in National-Socialist Germany, Fascist Italy and Communistic Russia, political liberalism has been deliberately sacrificed to economic socialism. In others, as in America, Great Britain and France, the struggle between these two conflicting tendencies is still undecided. Unless we should be misled by our personal preferences or unless civilization itself should be engulfed in a new world war, we believe that, in Switzerland as in the other surviving liberal democracies, political individualism will in the end prevail over all opposing influences.

That is, however, another story, the story of tomorrow. In this chapter we have sought to tell the story of yesterday and today, by showing the domestic use the Swiss people have made of the institutions of government they have developed in the course of the last century. The foreign policies they have pursued will be considered in our concluding chapter.

## CHAPTER XIII

### FOREIGN POLICY: NEUTRALITY AND THE LEAGUE OF NATIONS

#### *1. The origins of present Swiss neutrality.*

The six and a half centuries of foreign policy which lie behind present-day Switzerland may be roughly divided into three periods. During the first, from the end of the thirteenth century to 1515, the Swiss Cantons pursued a policy which was not only warlike, but frankly aggressive. Whereas the protection of the Alps had at first allowed them to assert their autonomy, their military successes led them next to achieve real independence, and finally to engage in a series of territorial conquests. In the latter half of the fifteenth century, their successive and decisive victories over Charles Duke of Burgundy at Grandson and Morat made of the Swiss cantons a first-rate military power. This period of expansion ended with their bloody defeat at the hands of Francis the First of France on the battle field of Marignano, in Northern Italy.

The realization of the fact that they had reached, if not overstepped the limits of their resources and, soon after, their internal confessional dissensions, led the Swiss from then on to seek safety in a policy of neutrality. This principle has, in one form or another, governed the international relations of Switzerland for the following four

centuries. For the first three of these, from 1515 to 1815, it took the shape of a loose tradition of hostility to external entanglements. This neutrality excluded neither certain defensive alliances, notably with the kings of France, nor the system of public recruiting of Swiss mercenary troops by foreign potentates, known as military capitulations. Although it neither completely preserved the cantons from the evils of internal confessional disputes, nor absolutely protected the integrity of the national territory against occasional violations by the armies of warring neighbors, it did allow the former to survive and the latter to be generally respected. Perhaps the greatest single blessing this somewhat uncertain, but constant tradition of neutrality bestowed upon Switzerland, was to avoid its being embroiled in the fierce Thirty Years' War in the first half of the seventeenth century. It is from this period that the astounding economic prosperity, which never failed to strike later travellers, is usually dated.

By the end of the eighteenth century, permanent neutrality had come to be looked upon as the true palladium of Swiss independence. The violation of this neutrality by the armies of the French Revolution in 1798 had so shocked the general feeling of the country, that Bonaparte saw fit, in the treaty of defensive alliance which he imposed upon Switzerland shortly after his mediation in 1803, to undertake "constantly to employ the good offices of the French Republic, to safeguard its neutrality." As the consequences were clearly to show ten years later, the neutrality of a small country can never be effectively safeguarded by one powerful neighbor alone, especially when combined with a defensive alliance. This clause in the treaty, however, may be quoted as a tribute paid to a principle which had already behind it a three century old



tradition. Moreover, as long as Napoleon remained the master of Europe, it was tolerably well respected. Switzerland was not immediately drawn into the wars of the Empire, as she might have been had this clause not protected her against the strategical designs of its own author.

When, after the battle of Leipzig in October, 1813, the tables began to turn and the Allies were in a position to threaten the neutrality of Switzerland, an extraordinary Diet was summoned to consider the menace. On November 18, of 1813, it issued a proclamation solemnly affirming the will of the country by all means in its power to protect its "neutrality, this fundamental principle and this safeguard of the national existence of the Swiss people."<sup>1</sup>

It is not surprising that the Allied armies failed to heed this warning. They were the less inclined to respect Swiss neutrality as their arch enemy, France, to whom Switzerland was bound by a defensive alliance, had never been very particular about respecting it herself. However, after twice passing over Swiss territory in the course of the last campaigns which were to bring about the downfall of Napoleon, the Allies themselves proved not only ready, but indeed anxious to recognize and to guarantee for all times the neutrality of Switzerland. At the Congress of Vienna, on March 20, 1815, the Powers, that is Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden,

"having recognized that the general interest demands in favor of the Helvetic Federation the advantage of a perpetual neutrality and wishing, by restitutions and cessions of territory, to furnish the means of assuring its independ-

<sup>1</sup> *Repertorium der Abschiede der eidgenössischen Tagsatzungen vom Jahre 1803 bis Ende des Jahres 1813*, Berne, 1842, p. 113; Roverea, F. de, *Mémoires*, Vol. IV, Berne, 1848, p. 139.

ence and of maintaining its neutrality; . . . declare: that after the Helvetic Diet shall have given its accession in good and due form to the stipulations contained in the present arrangement, an act shall be drawn up purporting on behalf of all the Powers to recognize and guarantee the perpetual neutrality of Switzerland within her new frontiers."

The Diet having acceded to the territorial wishes of the Allies on May 27, 1815, the Powers, by the act of November 20, 1815, agreed to give "formal and authentic recognition to the perpetual neutrality of Switzerland" and to "recognize authentically . . . that the neutrality and inviolability of Switzerland and her independence of all foreign influences are in the true interests of the policy of all Europe."

By the ratification of this act the neutrality of Switzerland, which had already for three centuries been a guiding principle of Swiss policy, constantly asserted and practiced, became a mutual undertaking, a solemnly binding international agreement, an essential part of the public law of Europe. It was as if the Monroe doctrine, heretofore proclaimed and applied by the United States alone, were to be officially agreed to by all the states which it concerned.

Since then and until the World War, the Swiss Government has, on every occasion when international disturbances occurred on its frontiers, publicly recalled the contractual character of the neutrality of Switzerland and solemnly affirmed its will to respect itself and to enforce by all means the respect by others of what, on May 13, 1848, for instance, was in the Diet proclaimed to be "the first and uppermost principle of federal policy."<sup>2</sup>

<sup>2</sup> *Repertorium der Abschiede der eidgenössischen Tagsatzungen aus den Jahren 1814 bis 1848*, Vol. II, Berne, 1876, p. 291.

That this was not mere rhetoric, intermittently resorted to when the country was in danger of invasion, is shown by the fact that the defense of neutrality is expressly mentioned among the duties of the Government in the federal Constitution itself.

## *2. Neutrality and the World War.*

The provisions relating to the defense of Swiss neutrality are thus enshrined both in a multilateral international agreement of capital importance and in the fundamental law of the land. Even more vital, however, they are enshrined in the minds and in the hearts, in the consciousness and even in the subconscious instincts of the Swiss people. This was already so in August 1914. How could it have been less so in November 1918?

During the intervening fifty terrible months, neutrality had saved Switzerland from the two greatest evils that can befall a small democratic community. Had it not been for an internationally recognized and steadfastly pursued policy of neutrality, Switzerland would have been either an utterly devastated battle field or the seat of the most violent internal conflicts, or partly one and wholly the other. Surrounded on all sides by warring great Powers, whose contrary hopes and fears were shared by opposing groups of the Swiss people, it was the miracle of neutrality alone which allowed Switzerland to emerge safely from the ordeal. On the one hand, the national policy of neutrality throughout the struggle obliged the people to observe a measure of moral restraint which no censorship could have imposed, and thus prevented conflicting sympathies from flaring out into flames of hostile passion. On the other hand, political and military neutrality, recognized and guaranteed by all its neighbors and unflinchingly ob-

served by the federal authorities, deterred the general staffs of the belligerents from violating the territorial integrity of the country.

Furthermore the same neutrality which thus protected Switzerland materially, at the same time allowed its inhabitants to save their souls morally. Was it not to neutrality alone that they owed the inestimable privilege of undertaking and pursuing those works of mercy in favor of the immediate victims of the war—the prisoners, the wounded and their families—which have made the Red Cross famous and beloved the world over? It is in the spirit of the Red Cross, *inter arma caritas*,—a spirit of international impartiality, solidarity and helpfulness—that the Swiss have sought and partly found that moral equivalent for military bravery and devotion without which their neutrality would have been basely selfish. The flag of the Red Cross, which is the flag of its native Switzerland with colors reversed, has ennobled a policy which is admittedly inglorious, but which might otherwise have become ignoble.

### 3. *Neutrality and the League of Nations.*

In view of all this past, the most distant as well as the most recent, it is truly not surprising that the Armistice should have found the Swiss people passionately and almost superstitiously attached to their national ideals of neutrality. It was then, while their neighbors were striving to make a true peace, which the moral and material damages of war made wellnigh impossible, that the victors invited them to join a League of Nations from which the vanquished were to be excluded.

This invitation opened the third and last period of the foreign policy of the Swiss nation. A new principle, that

of collective security, was to be combined with that of neutrality. Was such a combination, logically difficult, politically practicable?

This problem had to be faced frankly in Switzerland. It was obvious that the Swiss people, if called upon to choose between their traditional fidelity to the policy of permanent neutrality and their adherence to a newly to be set up League of Nations, would never discard the former in favor of the latter. The question therefore narrowed down to that of the compatibility of Swiss neutrality with Swiss participation in the League of Nations. That an effective League of Nations, willing and able to maintain peace by protecting all its members against any resolute aggressor, could not be made up solely of neutral states, was and is a truism. Was it therefore justifiable for neutral Switzerland to seek admission to a League of Nations? Was it conceivable that a League of Nations would accept as a member a state which refused to participate in the military sanctions that it might be called upon to apply?

The answer to the first question depended on the character of Swiss neutrality and on the structure and functions of the League which was to be established. The answer to the second, on circumstances beyond the control of Switzerland.

On February 8, 1919, alarmed at the news received from Paris, the Federal Council sent the Governments represented there and their peace delegations a special memorandum relating to the neutrality of Switzerland. In this memorandum, while "greeting with joy the appearance of a League of Nations which shall rebuild international relations on the unshakable foundations of Right and Justice," the Federal Council recalled the origins and character of

the neutrality of Switzerland. The document was, in fact, nothing but a plea in favor of allowing Switzerland to "take—and serve the common weal by taking—that place in the League of Nations which her history assigns to her," in other words to join the League of Nations while retaining her traditional neutrality.

From that time onward and for a whole year, the Federal Council tenaciously pursued a continuous struggle in favor of Switzerland's contentions. It is impossible here to recall all the various episodes of that struggle. At first, attempts were made to obtain an amendment to the official draft which the neutral states were invited to discuss with its authors in Paris on March 20 and 21. However, although the Swiss view was supported by other neutrals and in particular by Denmark, these attempts were of no avail. Then it was sought to obtain in favor of Switzerland alone some special dispensation. This was attempted first by two higher Swiss officers who, on behalf of the Federal Council, based their case on strategical considerations. Then it was again attempted with political arguments in connection with the declaration of inviolability in favor of the seat of the League. When this also failed and indeed threatened to nullify the efforts which Switzerland was also making in Paris in favor of Geneva as the seat of the League, it was suggested that the Swiss neutrality could be expressly mentioned in article 21 of the Covenant, after the Monroe doctrine. Surely, it was pleaded, this neutrality, recognized in 1815 by a multilateral international act, was at least as much of a "regional understanding . . . for securing the maintenance of peace" as the Monroe doctrine.

All these attempts failed. They were destined to fail because they were addressed primarily to the American and

British delegations who, being in Paris the most actively interested in translating the idea of a League of Nations into political reality, were the most reluctant to allow any exceptions and to establish any precedents which might weaken the new international order.

Finally the Swiss attained their goal by a very round-about method. Negotiating with the French, who wished to obtain the abolition of the neutrality of a part of Savoy, guaranteed, as was that of Switzerland, by the treaties of 1815, they succeeded in having inserted in article 435 of the treaty of Versailles a reference to these treaties as "constituting international obligations for the maintenance of peace." As the Covenant of the League was part of the same treaty and as it is stated in article 21 that nothing in the Covenant shall affect the validity of international engagements for the maintenance of peace, it logically followed that the signatories of the treaty, in spite of themselves, recognized the neutrality of Switzerland as being compatible with the Covenant. As the Federal Council triumphantly noted in its message of August 4, 1919, "concerning the question of the accession of Switzerland to the League of Nations":

"We have here, on the one hand, a recognition of Swiss neutrality made by the signatories of the Peace-treaty, which is entirely independent of the entry of Switzerland into the League and, on the other hand, an authentic interpretation of Article 21 of the Covenant of the League. Switzerland, then, without making any reservation, can enter the League with neutrality unimpaired, under the aegis of Articles 21 and 435 of the Peace-treaty."

The first round of the fight for the compatibility of Swiss neutrality with Swiss membership in the League had thus

been won by a very narrow margin. The first was however far from being the final and decisive round. Switzerland had yet to join the League, that is her Parliament and her people had yet expressly to accept the invitation extended to her. The necessity of congressional approval resulted from the clear provisions of the federal Constitution concerning the conclusion of international treaties. As for the referendum, it was deemed equally indispensable for political, if not certainly for legal reasons. It was felt that, in spite of the maintenance of her permanent neutrality, the entrance of Switzerland into the League of Nations involved such a momentous change in her previous international status, that the question should be treated as one of constitutional importance and could therefore be settled only by a vote of the people and of the cantons.

Before taking the risk of such a vote, the Government felt that the rights and duties of Switzerland as a neutral member of the League should be still more clearly defined and internationally recognized. Otherwise the people might well refuse to join the League and the League itself might refuse to accept Switzerland on her own terms. The necessity of securing additional assurances was made manifest when, on January 2, 1920, eight days before the legal birth of the League, the Supreme Council, in reply to a note communicated by the Swiss Government to all the future original members of the League concerning the procedure and date of Swiss accession, declared that the question of the compatibility of Switzerland's neutrality with Swiss membership in the League still remained open. After further correspondence with the Supreme Council on the subject, the matter was brought before the Council of the League of Nations at its second



session in London, in February 1920. As a result of negotiations between the Council and the Swiss Government, a formal resolution, since known as the declaration of London, was adopted by the Council on February 13, 1920.

Under the terms of this resolution it was agreed that "Switzerland recognizes and proclaims the duties of solidarity which membership of the League of Nations imposes upon her, including therein the duty of coöperating in such economic and financial measures as may be demanded by the League of Nations against a Covenant-breaking State, and is prepared to make every sacrifice to defend her own territory under every circumstance, even during operations undertaken by the League of Nations, but will not be obliged to take part in any military action or to allow the passage of foreign troops or the preparation of military operations within her territory."

According to this resolution, the decision of the Council of the League of Nations, of which the Federal Council declared, in its message of February 17 to the Federal Assembly that "its historic importance could hardly be exaggerated," cleared the way for the final parliamentary debates concerning the accession of Switzerland to the Covenant. On March 2, 1920, the National Council, and two days later the Council of States, voted in favor of the accession. The majorities, one hundred and fifteen against fifty-five and thirty against six in the two Houses respectively, were substantial, but not overwhelming. It was obvious to everyone, on the morrow of this parliamentary vote, that it would be more difficult for the Government to carry with it the Swiss people, than it had been to convince its legislators.

In order to allow for a thorough campaign of popular

enlightenment, the Government decided that the constitutional referendum on the accession of Switzerland to the Covenant of the League of Nations was to take place some months later, on May 16, 1920. The question put to the people and to the cantons on that occasion was whether they approved the affirmative resolution of the Federal Assembly based on the following preamble:

"Having taken cognizance of a message of the Federal Council dated August 4th, 1919, and of a supplementary message dated February 17th, 1920;

Whereas the perpetual neutrality of Switzerland, recognized particularly by the Act of November 20th, 1815, is held under Article 435 of the Treaty of Peace concluded on June 28th, 1919, between the Allied and Associated Powers and Germany to be an international engagement for the maintenance of peace and whereas the permanent neutrality of Switzerland is, according to Article 21 of the Covenant of the League of Nations, to be construed as not being incompatible with any of the provisions of the said Covenant, as has been solemnly recognized by the Council of the League in the declaration of London of February 13th, 1930;

Trusting that the present League of Nations may in a non-distant future be enlarged so as to become universal."

This preamble, on the basis of which the accession of Switzerland to the Covenant was secured, shows the intimate organic connection between this accession and the maintenance of her permanent neutrality. It also shows the vital importance attached by the Swiss Government to the universality of the League. Whereas the non-fulfillment of the latter hope, however, might eventually lead

Switzerland to leave the League, the recognition of the former fact is the very condition of Switzerland's membership. One may confidently assert that without this express recognition, the results of the referendum would have been negative.

As it was, the accession was voted only by a very narrow margin; 416,870 voters and ten cantons and three half-cantons were favorable, 323,719 voters and nine cantons and three half-cantons were hostile. Had a hundred of the votes cast in Appenzell Exterior in favor of joining been negative, the necessary majority of cantons would not have been obtained and Switzerland would have remained outside the League. The part taken by the Federal Council in the popular campaign and the percentage (76.5 per cent) of the registered votes polled were both quite unprecedented.

It was thus thanks to the combination of articles 21 of the Covenant and 435 of the Treaty of Versailles, to the declaration of London and to this popular vote, that Switzerland entered the League of Nations as a permanently neutral member in 1920 and has remained therein as such ever since.

#### *4. The policies of Switzerland within the League.*

The neutrality of Switzerland has affected her policy in the League in several respects. In the first place it has led the Federal Council and Swiss delegates in Geneva persistently to stress the need of League universality. A neutral state in a universal League pledged to mutual collective security would already in itself be a challenging exception. But a neutral state in an incomplete League is besides a somewhat alarming anomaly. Neutrality im-

plies impartiality. But an incomplete League is almost bound to be, and is certainly bound to appear, partial in its policies, as it is partial in its membership. If, in 1920, Switzerland had not had every reason to hope that all its immediate neighbors would shortly become members of the League, she would certainly not have decided to join the international organization. The importance attached to the attitude of the United States in Switzerland is a proof thereof. The admission of Austria in 1920 and especially that of Germany in 1926 were therefore hailed with particular joy in Switzerland. Germany's resignation in 1933 and Italy's present relations with Geneva are correspondingly deplored.

In the second place, Switzerland's neutrality has led her spokesmen on every occasion to minimize the importance and to reduce the effectiveness of sanctions as an instrument for the maintenance of peace. As long as the League remains a mere clearing-house for international information or a mere meeting place of foreign ministers or a mere occasion to prepare technical conventions, to promote arbitration, or even to discuss disarmament, neutrality is not an embarrassment to the League, nor the League a menace to neutrality. When sanctions are considered, however, either in theory, as in 1920 and 1921, or especially in practice, as today, then the logical contradiction becomes acute between the active solidarity implied in League membership and the passive impartiality heretofore implied in traditional neutrality. It is therefore natural that Switzerland should never have looked with favor upon the provisions of articles 10 and 16 of the Covenant nor upon any measure intended "to put teeth into the League" as the American phrase goes. As regards the importance of sanctions in Swiss eyes, Mr. Motta has

often since expressed anew the opinion he frankly stated in the First Assembly in the following terms:

"The League of Nations has two weapons at its disposal—a moral weapon and an economic weapon.

The moral weapon is the force of public opinion; the economic weapon is the blockade. In spite of appearances, I maintain that of these two weapons the more deadly and the more effective is the force of public opinion."

In the discussions concerning the economic weapon of the League, in 1920 and 1921, as well as in the debates on the Canadian proposal to delete article 10, from 1920 to 1923, Switzerland was always on the side of the opponents of a strong League to enforce peace. The edulcorating resolutions by which the Assembly of 1921 interpreted article 16, so as to make its provisions less exacting on the pacific members of the League, but of course correspondingly less deterring for the would-be aggressor and less effective in their actual application, were warmly welcomed by the Swiss delegation which had taken an active part in framing them.

It is to be expected that Switzerland will be more or less insistent on her special status in the League in future as the League becomes less or more universal and less or more faithful to its own ideals of collective security. In pure logic it must be admitted that neutrality and collective security are two mutually exclusive policies. In the realm of politics, where logic has never been supreme, they are compatible only if not carried to their last consequences. In the scales of history, one must rise as the other falls.

For Switzerland, to resort to a more modern metaphor, neutrality is the parachute which she will not abandon until international flying becomes safer. She holds to it without

any false pride, but also without any remorse, as it does certainly not overload the common aeroplane of collective security. Had there been no accidents since 1920, when, not without hope, nor yet without misgivings, she had decided to enter the League machine, the parachute might today be almost forgotten. As it is, the Swiss people would be unwise as well as ungrateful if they discarded today a political instrument to which they have so often owed their salvation in the storms of the past. None will be happier than they, however, if it should prove useless in the future. For the present, while holding in reserve their parachute, they are of course ready and anxious to do what is in the power of one of the smallest and weakest of the crew, to contribute to the progress and to the security of the common enterprise. For to them, as to all other enlightened peoples, it is obvious that, in the long run, there can be no true peace for any nation as long as there is not peace for all and that there can be no peace for all without the active cooperation of the many.

They therefore look upon neutrality not as an alternative policy to common action under the League, but only as a temporary makeshift, useful and permissible for a pygmy state surrounded by gigantic neighbors, pending the sincere conversion of all the latter to the only true ideals of complete collective security.



## BIBLIOGRAPHICAL REMARKS

### 1. *The bibliography of the government of Switzerland.*

The science of government, as distinct from constitutional law on the one hand and political history on the other, has, in the course of the last century, received more attention in the Anglo-Saxon world and particularly in the United States than on the continent of Europe. If this were not a general fact, due to a variety of causes—mainly, we believe, political and academic—the striking contrast between the abundance of excellent studies in English on the government of Switzerland and the extreme poverty of the corresponding literature in French and German, would be difficult to explain. As it is, there is to our knowledge no Swiss counterpart to such synthetic writings on Switzerland as those of Adams and Cunningham, Moses, Winchester, Vincent, Lloyd, Bryce, Lowell and Brooks, if we except the two volumes of A. E. Cherbuliez, *De la démocratie en Suisse* (Paris and Geneva, 1843), which appeared nearly a century ago.

No less striking is the contrast between the scarcity of Swiss books on Swiss government as a whole and the superabundance of Swiss articles, monographs and treatises on every aspect, especially historical and legal, of Swiss life. The seven Swiss Universities, numerous local and general historical societies and countless independent scholars, have for generations been enriching Switzerland with an almost baffling wealth of studies on its past and present. This



effort has been so continuous, so varied, and so productive, that there is probably no country today which knows itself as well as that of the twenty-two cantons. Let us say rather, more modestly and more truthfully, no doubt, that there is probably no country today that is as well equipped to know itself as Switzerland. This qualification is suggested by the obsessing suspicion that the writers on national topics are perhaps more numerous in Switzerland than their readers!

However that may be, the present study is based primarily on original sources, the consultation of which has been supplemented mainly by personal observation.

The purpose of this note is not to supply the reader with an exhaustive nor even with a selected bibliography of all the topics we have dealt with in the preceding pages. It is intended rather to serve as a guide for the various types of students who, wishing to enlighten themselves on some special aspect of Swiss political life, may be grateful for some indications as to the best and shortest roads leading to the available sources of information.

For such American undergraduates as might not have a ready reading knowledge of French or German—in spite of the praiseworthy efforts of most University administrations to reduce their numbers, we surmise that their species is not yet quite extinct—the most recent and useful books to my knowledge are those of Professor Robert C. Brooks (*Government and Politics of Switzerland*, Yonkers, 1918; *Civic Training in Switzerland*, Chicago, 1930). They contain, besides much accurate information collected on the spot and presented with the enthusiasm of a lenient friend, useful bibliographical notes. Many of the countless previous books on Switzerland in English are mentioned therein. Lord Bryce and A. L. Lowell have also, since

the publication in 1918 of the first edition of Brooks' *Government and Politics*, added some very enlightening chapters on Switzerland to their earlier writings on the subject.

For the student whose research is not limited by the language barrier, but only by the Atlantic Ocean, the following works may be cited, which should be available at least in the largest American libraries:

The bi-lingual *Annuaire statistique de la Suisse* (Statistisches Jahrbuch der Schweiz), published by the Federal Bureau of Statistics. This official statistical yearbook contains material of interest not only for demographers, economists and financiers, but also for all students of politics. It has been published annually for the last forty-four years.

The *Dictionnaire historique et biographique de la Suisse*, 7 vols., Neuchâtel, 1921-1933, which may also be consulted in its German edition, entitled *Historisch-biographisches Lexikon der Schweiz*. This unofficial encyclopaedic work contains brief articles, mostly by very competent authors, on all past and recent happenings, institutions, and individuals of political interest in Switzerland.

The *Handwörterbuch der schweizerischen Volkswirtschaft, Sozialpolitik und Verwaltung*, 4 vols., Berne, 1903-1911, although sadly out of date on many points, may still be usefully consulted.

The yearbooks published by the New Helvetic Society since 1929 under the title *Die Schweiz, ein nationales Jahrbuch*, Zurich, 1929-1935, contains, besides many excellent articles of timely interest, mostly in German, a month by month chronicle of current events of political interest.

The two foremost recent commentaries on the Swiss federal Constitution are: F. Fleiner, *Schweizerisches*

*Bundesstaatsrecht*, Tübingen, 1923, 813 pp. (a revised edition is to appear shortly in Zurich), and W. Burckhardt, *Kommentar der schweizerischen Bundesverfassung vom 29. Mai 1874*, 3rd ed., Berne, 1931, 846 pp. Of these two monumental works, Fleiner's is the more philosophic and synthetic in treatment, Burckhardt's the more analytical and therefore the more useful for the practical lawyer.

The recent volume, *Suisse*, Paris, 1935, published in the collection of *La Vie juridique des peuples*, contains a series of interesting monographs on various aspects of Swiss law.

The author may perhaps be permitted here to mention also his most recent book on Swiss politics, *L'individu et l'Etat dans l'évolution constitutionnelle de la Suisse*, Zurich and Paris, 1936.

On the general history of Switzerland, the following standard works may be cited:

J. Dierauer, *Geschichte der schweizerischen Eidgenossenschaft*, 5 vols., Gotha, 1887-1917, translated into French by A. Reymond under the title of *Histoire de la Confédération suisse*, 5 vols., Lausanne, 1911-1919.

W. Oechsli, *Geschichte der Schweiz im 19. Jahrhundert*, 2 vols. (1798-1930), Leipzig, 1903, 1913.

Ed. Fueter, *Die Schweiz seit 1848*, Zurich, 1928.

H. Schneider, *Geschichte des schweizerischen Bundesstaates, 1848-1918*, vol. I, 1848-1874, Zurich, 1931.

Ed. His, *Geschichte des neueren Schweizerischen Staatsrechts*, 2 vols. (1798-1848), Basle, 1920, 1929.

## 2. Suggestions for research students.

The American student desirous of undertaking in Switzerland some original piece of research work in the field of Swiss government will find libraries and archives at his disposal in the capitals of all the cantons. The Federal

Library, at Berne, and the so-called Central Library in Zurich are the most complete. Thanks to a well-organized exchange system, books belonging to any one public library in Switzerland may be readily consulted in all the others.

For such students, two further indications may suffice.

The first relates to the available bibliographical publications on Swiss history and institutions. In 1914, H. Barth, a member of the staff of the Zurich municipal library, began the publication of a *Bibliographie der Schweizer-Geschichte enthaltend die selbständig erschienenen Druckwerke zur Geschichte der Schweiz bis Ende 1912*. This work, published in three volumes totalling over 2,200 pages of titles (Basle, 1914, 1915) contains, arranged in chronological and geographical order, as well as according to subject matter and by authors, a practically complete bibliography of everything that had previously been published in book or pamphlet form on Switzerland. Since 1915 the Swiss Historical Society has regularly published annual supplements to Barth's bibliography. In these volumes, entitled *Bibliographie der Schweizergeschichte*, may be found references similarly arranged, not only to all books and pamphlets, but also to the principal review and even newspaper articles on Swiss history.

The other indication which may perhaps usefully be made for the benefit of advanced students relates to the principal Government publications.

The most important source material in the field of federal politics is contained in the *Feuille Fédérale de la Confédération Suisse* (Schweizerisches Bundesblatt). This official publication, of which there exists also an edition in Italian since January 1st, 1918, appears weekly ever since 1848 and is bound into from two to five annual volumes. It contains the financial and administrative accounts and,

among much other official material, all the messages of the Federal Council to the Federal Assembly, as well as a great number of legislative committee reports. As every statute that is enacted is introduced by such a message and frequently gives rise to the drafting of such reports, the *Feuille Federale* must be consulted by anyone who wishes to understand the legislative activity of the Swiss Confederation. It is all the more indispensable as, until 1891, there was no official record of the debates in the Federal Parliament. Since that date, the most important of these debates, but not all, are published in the *Bulletin sténographique officiel de l'Assemblée fédérale* (Amtliches stenographisches Bulletin der schweizerischen Bundesversammlung), of which at least one volume appears every year.

The federal statutes and ordinances are to be found in an official publication entitled *Recueil officiel des lois et arrêtés fédéraux de la Confédération Suisse* (Amtliche Sammlung der Bundesgesetze und Verordnungen der schweizerischen Eidgenossenschaft). There is also an Italian edition. There has been one volume issued annually since 1874.

As for the cantons, each has its own customs, in the matter of Government publications, as in all others. These publications vary considerably according to the size and wealth of the canton, the most important being as full as the federal official documents. In fact in some cantons, as in Geneva for instance, the local parliamentary debates have been fully recorded throughout the nineteenth century.

The same is true of the principal cities, which, as we have seen, enjoy a very large measure of municipal autonomy.

The abundance and variety of official documents and the wealth of manuscript material in the archives should not however, in our opinion, completely absorb the attention of the American student interested in Swiss government. It is in the direct observation of local political life and in the comparative study of the actual workings of democracy in our two Republics that he will be most apt, we believe, to break new ground and to contribute most usefully to the progress of political science.



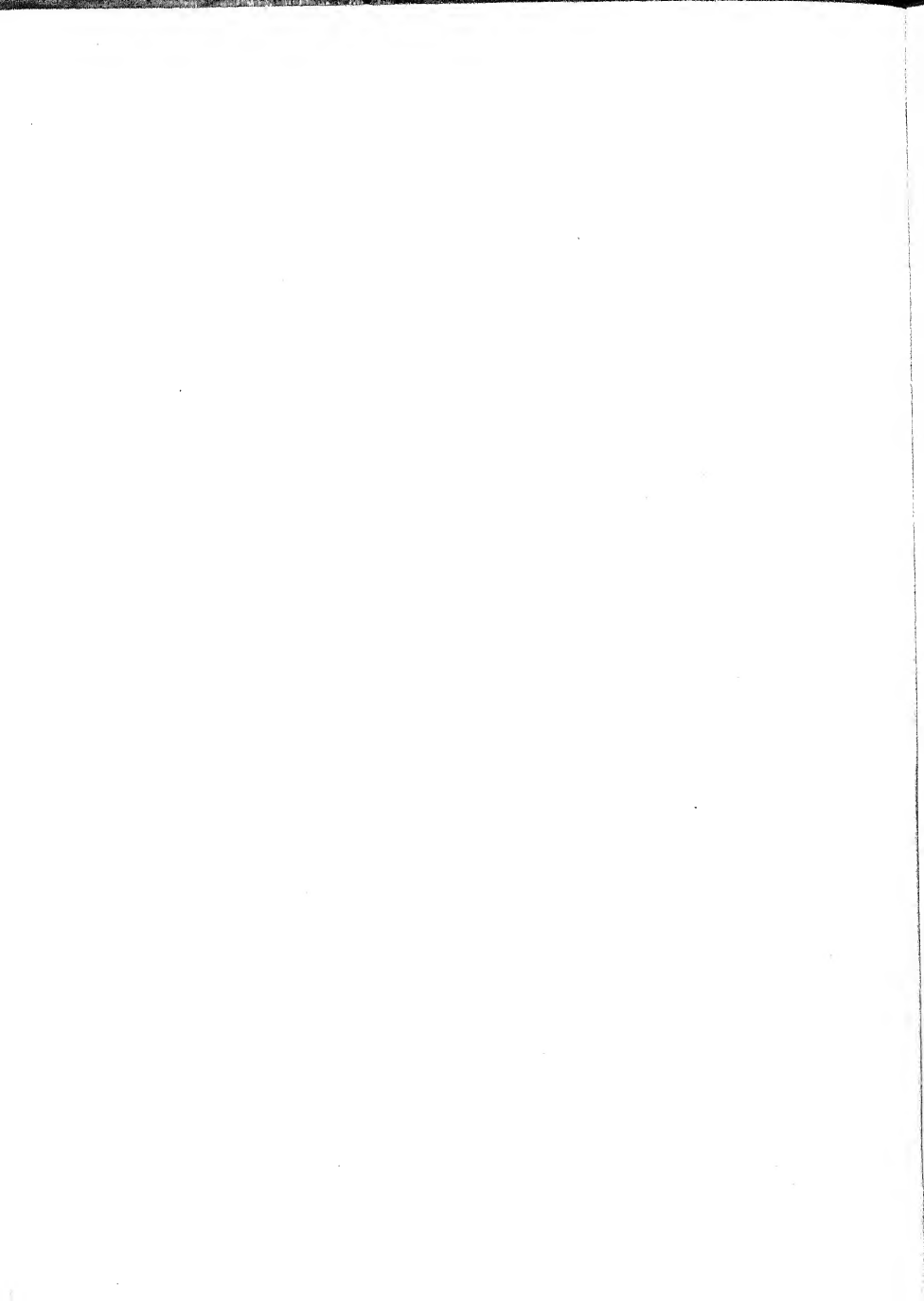
## ACKNOWLEDGMENTS

The information contained in this little book is drawn in part from the author's practical experience as a Swiss citizen and in part from the research he has been pursuing for years in the field of the political and economic life of his country. The debt of gratitude he owes all those who have directly and indirectly assisted him in his labors he has recognized in his previous writings and most recently in his "*L'individu et l'Etat dans l'évolution constitutionnelle de la Suisse*" which he has just published. He here reiterates the thanks he has expressed there.

He wishes however especially to acknowledge the great services his secretary at the Graduate Institute of International Studies, Mrs. Goldenberg-Goebel, has rendered in the preparation of these pages. The care, the intelligence, the confident interest and the unfailing devotion with which she has assisted him in the preparation of this volume deserve far more than this passing word of thanks. May it serve at least as a token of his deep gratitude.

W. E. R.





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